

**RIGHT TO KNOW ADVISORY COMMITTEE  
LEGISLATIVE SUBCOMMITTEE**

**DRAFT AGENDA**

August 23, 2012

9:00 a.m.

Room 438, State House, Augusta

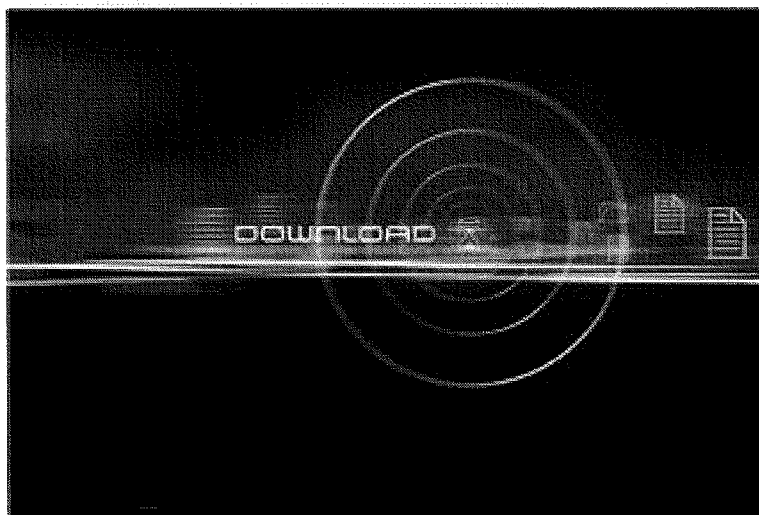
**Convene**

1. Welcome and Introductions  
Judy Meyer, Chair
2. Projects
  - A. Email retention, storage, retrieval – public bodies and individual public officials  
State Archivist David Cheever
  - B. Status of e-mail addresses collected by schools and towns  
Existing statutes  
Draft?
  - C. Use of technology in public proceedings (participation from remote locations) –
  - D. Templates for drafting specific confidentiality statutes
3. Scheduling future meetings
4. Other?

**Adjourn**



# STATE OF MAINE E-MAIL AND DIGITAL RECORDS RETENTION GUIDE



A Maine State Archives Publication  
July 2012

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## Frequently Asked Questions:

When is something "born digital" actually a record, as far as State of Maine law and policy is concerned?

If recorded information is created or received as part of your official duties, it is almost certain to be an official State of Maine record. The format used is irrelevant.

How long do e-mails have to be kept?

*Record retention schedules* must be approved by the State Archivist and the Archives Advisory Board, per the Archives and Records Management Law in Title 5. E-mails that qualify as official state records should be classified (matched up to the appropriate retention schedule) according to their content so they can be deleted when it is time, or (for about 5 percent of messages) retained permanently. There are ways to make classifying your messages easier than this may sound. **There is no "retention period for e-mail" as a blanket requirement or policy, and retention schedules do not have to specify that they apply to e-mail messages. An e-mail may or may not be a public record.**

What is a record copy, and who is responsible for keeping it?

E-mail, stored digital files from Word and Excel, and social media postings are examples of electronic records that could be considered official records under law and policy. E-mail transactions automatically generate at least two copies, one for the sender and one for the recipient. There are often many more copies, because it is so easy to "cc" others and to forward messages. Generally the person who originates the message holds the so-called *record copy*, which is the one that must be kept for the full retention period. Those who receive other copies may (and should) delete them as soon as they have served their purpose. However, if the recipient is required to do something after receiving the message, that may mean an additional record copy has been created. Example #1: Your boss assigns work to you by sending you an e-mail. You will be held responsible for completing the assignment, so reading this e-mail and then following its instructions is part of your job. You must therefore treat it as an official record. Example #2: The Governor's Office sends out an e-mail reminding all employees to use public transportation whenever possible. This message has only one record copy, held by the person whose job it was to send it. Everyone else can and should delete the message after reading it.

When the State of Maine is able to install a full-scale "Records Management Application" (*RMA*), that system will retain only one copy of any digital record for the longest retention period that applies. All other "copies" will actually be stubs leading to the record copy.

How can I organize my e-mails to make retaining and retrieving them easier?

Ask your *records officer* (every department or independent agency should have at least one) to explain the records retention schedules that apply to your position. It is best to set up folders in your Outlook mailbox that organize e-mail messages according to your retention schedules, with subfolders set up by year and month. This will make it easy to delete messages that have fulfilled their retention periods, without having to look at individual messages again.

## What about mailbox storage limits?

Outlook has an "auto-archiving" function that can be set up to move your older messages to a .pst file, automatically. Once that happens, the messages are available to you as easily as ever; but they're stored on a server drive, not in your mailbox. So they no longer count against your quota. Outlook will keep your filing system when it "auto-archives" your older mail, and you will be able to search for messages that have been "archived" using the same Outlook tool you use within your mailbox.

## What about FOAA (the Freedom of Access Act)?

Whether or not it is an official record, anything that is stored on a State of Maine computer is a *public record* legally speaking unless a privacy statute protects all or part of it from disclosure. Your permission is not necessary when officials responsible for FOAA responses go through your e-mails and then release them to anyone who asks. The attorney or other official who reviews your messages before releasing them will only withhold what is confidential by statute. So if a FOAA search turns up personal messages, SPAM that you and the system both failed to delete, or outdated official e-mails that you could and should have deleted per retention schedules, all of those things will be released. **"Public record" status according to the Freedom of Access Act has nothing to do with the definition of an official record for retention purposes.**

## Is it acceptable to delete messages after I've saved them somewhere else or printed them for paper filing?

From a records retention standpoint only, yes. However, when a FOAA search or legal discovery proceeding includes review of a state employee's e-mails, missing messages can create two problems. First, it is apparent to the person performing the review that certain messages are no longer there. This can be confusing to the reviewer, and it may be viewed by the requestor as an attempt by the State of Maine to conceal records instead of releasing them. Second, every e-mail message has metadata attached. This "data about data" is invisible to the e-mail user, but it is often exactly what most interests a FOAA or legal discovery requestor. So destroying it by deleting the original message, even after saving the text to another format (paper included), can be treated by the courts as a deliberate act of bad faith.

## What about e-mail "chains" (threads, strings, etc.)?

Saving the final message only would be fine for retention purposes alone, if no text or header information was deleted during the exchange. However, deleting the individual messages in "threads" creates the same problems as saving them in other formats. A FOAA requestor may not get the information actually sought, and a court may rule that the State of Maine's response to a discovery proceeding is deliberately inadequate because original messages cannot be produced with all their metadata attached.

## Why not just keep it all (and isn't OIT doing that already)?

There are several reasons why keeping all e-mails that pass through the server gateway, indefinitely, is not the miraculous solution some people believe it to be (nor is this a regulatory requirement inflicted by the Federal government on all businesses and governmental units – that belief qualifies as an urban legend). First, storage is by no means free, or even cheap enough to justify treating it as if it were free. Second, the more messages stored, the longer and more complicated a task search and retrieval becomes. No tools now available can eliminate this seldom considered truth. Third, records kept beyond their retention date are a liability for the organization retaining them. What is there must be searched for and produced, if requested; and the costs of doing this otherwise needless work can be enormous. In fact, they already are becoming ruinous for some agencies.

## What about voice mail?

State of Maine voice mail messages do not need to be treated as official state records now, but this could change as business processes adapt and employees find more extensive and effective ways to use the technology. There was a time, not that long ago, when State of Maine e-mail messages seldom had substantive content; so it is likely that voice mail, which is generally transitory in nature today, will find substantive uses in the future. That is when we will need to classify, store, and retain it according to its content, just as we are now doing with e-mails and other born digital records.

## What about instant messaging?

The private sector is already treating this as a record-creating technology, at least in some industries. Government employees tend to use it as if it cannot possibly create documentation, when that may well be happening without the knowledge of those "chatting" in the line of duty. So far there is no mandate to capture all instant messaging exchanges and make them available under FOAA, subject them to records retention requirements, etc. But that is likely to change within the next few years, so any systems the state purchases for managing, classifying and retaining e-mail should be capable of doing the same with instant messaging.

## What about social media?

According to the National Archives and Records Administration, Federal agencies which use social media are already creating records that must be identified as such and retained according to approved retention schedules: <http://www.archives.gov/records-mgmt/bulletins/2011/2011-02.html>.

So far Maine's state agencies appear to be using social media in much the same way they use the World Wide Web, to publish their information and make it available to the public. As long as this is the case, each agency should be guided by Title 1, §501-A. Publications of state agencies: <http://www.mainelegislature.org/legis/statutes/1/title1sec501-A.html> in submitting copies to the State Librarian.

## A word about digital information in general

A conversation, face to face or in a phone call, results in no recording unless someone deliberately arranges for that. Instant messaging exchanges, voice mail messages, and sending/receiving e-mail messages create recorded information automatically, though, as an essential part of the process. Some VoIP systems create an e-mail for each call they process. So far this is not true with the State of Maine's VoIP system. However, at least one of Maine's municipalities has purchased and is implementing a software system that tracks all VoIP phone calls and allows municipal employees to store comments concerning those calls. This does create records to which that municipality must apply its retention schedule.

## Contact information

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Records Management Analyst, Felicia Kennedy ([felicia.kennedy@maine.gov](mailto:felicia.kennedy@maine.gov)) 287-5798

## Definitions

Accession. To transfer physical and legal custody of documentary materials to an archival institution.

Archives. When used as a noun and capitalized, for this publication's purposes it means the Maine State Archives. When used as a verb, to denote the disposition of a record, it means "save for permanent retention by the Maine State Archives."

Archiving. The off line storage of digital records, including e-mail messages, before disposition action is taken.

Archives Advisory Board. The body, along with the State Archivist, that must approve the destruction of records. This is done by the approval of records disposition schedules indicating that all records in a record series may be destroyed after current business needs have been met.

Assistant Records Officers. Individuals, appointed and supervised by a records officer, who are responsible for records management within subdivisions of Maine state departments or agencies, such as bureaus or divisions.

Attachment. A record, object, or document associated with another document or record and filed in the e-mail archive or transmitted as part of the other document or record.

Born Digital. A record that is created in a digital format, and printed (if at all) only to create convenience copies.

Convenience Copies. Additional copies, created for informational purposes only, that may be destroyed when they are no longer useful. Convenience copies should never be kept longer than the record copy, as this can create confusion and resulting legal issues.

Delete. The process of permanently removing, erasing, or obliterating recorded information from a medium, especially a reusable magnetic disk or tape.

Destruction. In records management, the primary type of disposal action. Methods of destroying records include selling or salvaging the record medium and burning, pulping, shredding, macerating, or discarding it with other waste.

Disposition. Those actions taken regarding state records after they are no longer required to conduct current agency business. These actions include:

- Transfer of records to agency storage facilities or the Maine State Record Center.

- Transfer of records from one Maine state agency to another.

- Transfer of permanent records to the Maine State Archives.

- Disposal of temporary records no longer needed to conduct agency business, usually by destruction.

Document. Information set down in any physical form or characteristic. A document may or may not meet the definition of a record.

E-mail. E-mail means electronic mail.

Electronic Mail Message. A document created or received via an electronic mail system, including brief notes, formal or substantive narrative documents, and any attachments, such as word processing and other electronic documents, which may be transmitted with the message. Attachments are considered to be part of the message.

Electronic Record. Information recorded in a form that requires a computer or other machine to process it and that satisfies the legal definition of a record according to 5 M.R.S.A. §92-A.

File. An arrangement of records.

When used as a noun, this term is used to denote papers, photographs, photocopies, maps, machine-readable information, or other recorded information, regardless of physical form or characteristic. Files are accumulated or maintained on shelves, in filing equipment, boxes, or machine-readable media, and they occupy office or storage space.

When used as a verb, this term is used to define the act of assigning and storing records in accordance with the file plan .

Freedom of Access Act. The Freedom of Access Act is the State of Maine statute defining the rights of the public to have access to, and copies of, non-confidential public records held by the State of Maine, its counties, municipalities, and other public entities. See 1 M.R.S.A., Chapter 13.

Legal Discovery (or Discovery). Legal discovery is a formal investigation, governed by court rules, that is conducted before trial. Discovery allows one party to question other parties, and sometimes witnesses. It also allows one party to force the others to produce requested documents or other physical evidence.

Metadata. Data describing stored data: that is, data describing the structure, data elements, interrelationships, and other characteristics of electronic records.

Move. Function that allows the user to relocate records and metadata.

Non-Record. A document that does not meet the definition of a record and thus is not subject to a retention period. Non-records include documents that are personal, not related to State of Maine official business, or of minimal value for documenting government transactions.

Permanent Record. Records appraised by the Maine State Archives as having sufficient historical or other value to warrant continued preservation by Maine state government beyond the time they are normally needed for a particular agency's administrative, legal, or fiscal purposes.

Public Record: Per 1 M.R.S.A., Chapter 13, any recorded information in a state or local government's custody that is not restricted by statute.

Record. Information, regardless of medium, detailing business transactions. Records include all books, papers, maps, photographs, machine-readable materials, and other documentary materials, regardless of physical form or characteristics. Records are made or received by an agency of Maine state government under law or in connection with the transaction of public business. "Archival" records are preserved by the Maine State Archives as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of government or because of the value of data in the record.

Record Copy. The copy of a record that must be retained for the term indicated by its related records disposition schedule.

Record Series. A particular set of records, defined by the Maine State Archives, having a legally required retention period and disposition determination of destroy or Archives (permanent retention).

Record Series Identifier. An alphanumeric or numeric identifier, assigned by the Maine State Archives, indicating a unique record series.

Records Disposition Schedule (also: Records Retention Schedule, Records Schedule). A listing of record series with associated retention periods and final disposition (destroy or Archives).

Records Management. The planning, controlling, directing, organizing, training, promoting, and other managerial activities involving the life cycle of information, including creation, maintenance (use, storage, retrieval), and disposal, regardless of media. Records management procedures are used to achieve adequate and proper documentation of state policies and transactions and effective and economical management of agency and organizational operations.

Records Officers. Records officers are appointed by the agency head (commissioner or equivalent) to act on that person's behalf in complying with the requirements of the Archives and Records Management Law.

Scheduled Records. Records whose final disposition has been approved by the Maine State Archives and, for records whose disposition is "destroy," by the Archives Advisory Board.

Social Media. World Wide Web applications such as Twitter, FaceBook, YouTube, and others designed for social networking purposes, which government agencies may use as a means of communicating with citizens.

Storage. Space for non-active records. Can be digital, optical, or cubic feet.

Subject. The principal topic addressed in a record.

Transfer. The act or process of moving records from one location to another, especially from the office space in which the record is used to the Maine State Records Center, from one state agency to another, or from office or storage space to the Maine State Archives for permanent preservation. Physical transfer does not relieve the owning organization of legal and management responsibilities for non-permanent records. Accessioning permanent records to the Maine State Archives, however, transfers both legal ownership and responsibility for the records to the Maine State Archives.

Unscheduled Records. Records that do not have a Maine State Archives-approved final disposition and thus may not be destroyed.

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# RECORDS MANAGEMENT MANUAL



**MAINE STATE ARCHIVES**  
*Division of Records Management Services*

JULY 2012



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# INTRODUCTION

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## THE LAW

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**The Records Management Program for the State of Maine is authorized by:  
MRSA Title V, Chapter 6, Section 95, Subsection 7:**

**7. Records Management Program.** To establish and administer in the executive branch of State Government an active, continuing program for the economical and efficient management of state records. Upon request, the State Archivist shall assist and advise in the establishment of records management programs in the legislative and judicial branches of State Government and shall, as required by them, provide program services similar to those available to the executive branch. The State Archivist shall, with due regard for the functions of the agencies concerned:

- A.** Provide standards, procedures and techniques for effective management of records in the conduct of current business.
- B.** Recommend improvements in current records management practices, including the use of space, equipment and supplies employed in creating, maintaining, storing and servicing records;
- C.** Establish schedules, in consultation with the heads of state departments, under which each department shall retain state records of continuing value, and dispose, as provided by this chapter, of state records no longer possessing sufficient administrative, legal or fiscal value to warrant their future keeping for current business;
- D.** Obtain such reports from agencies as are required for the administration of the program;

The head of each agency shall establish and maintain an active, continuing program for the economical and efficient management of the records of the agency in compliance with the standards, procedures and regulations issued by the State Archivist.

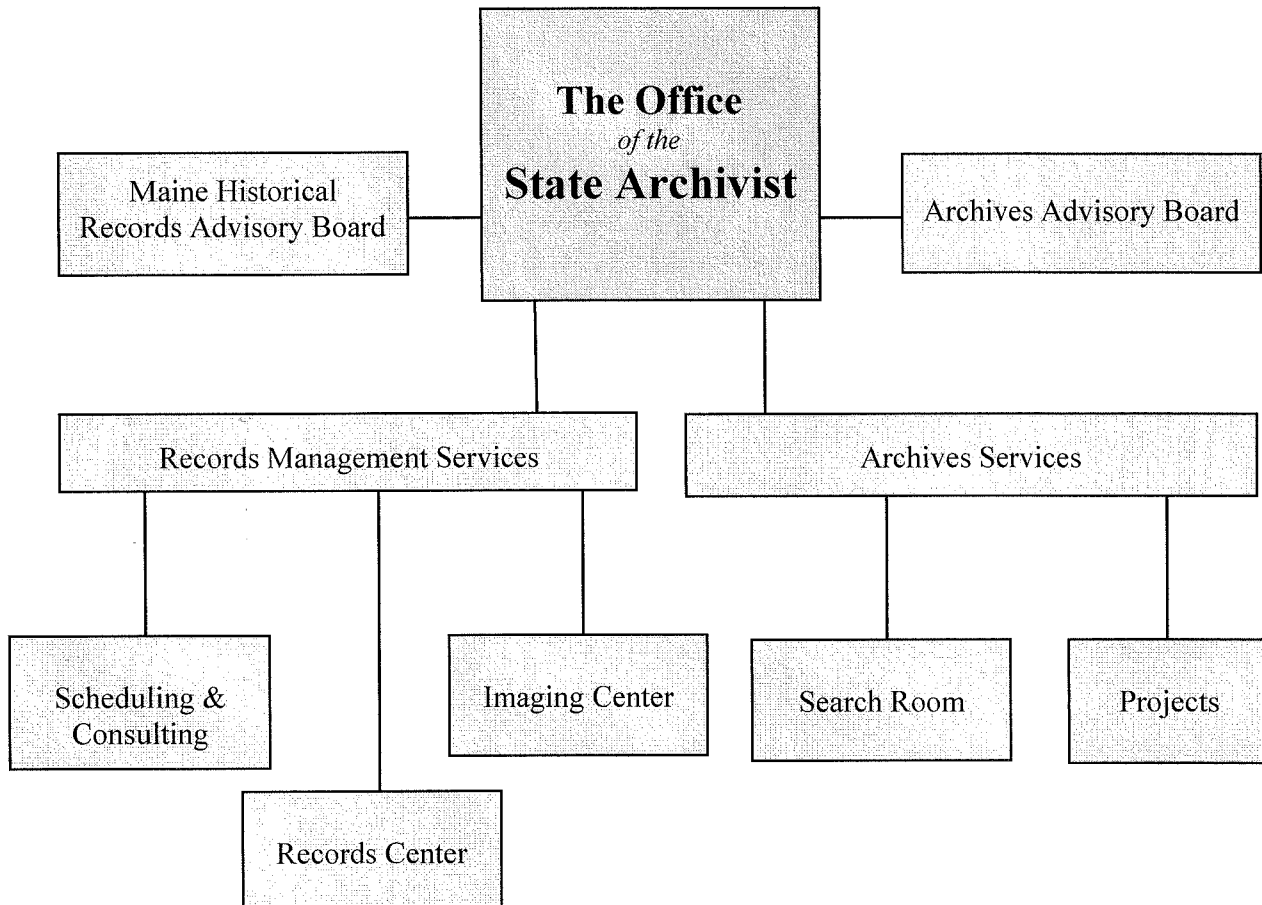
**Transfer of state records.** To provide for the transfer to the archives of state records, disposed of under subsection 7, paragraph C, which have archival value;

**Destruction of Records.** To authorize and receive confirmation of the destruction of the records of any state department, which, in the opinion of the head of the department are no longer of value to the department, and which, in the opinion of the State Archivist and the Archives Advisory Board, have no archival value to the state;

To carry out the Legislature's intent as described in this statute, the State Archivist has established our program. **We are here to provide these services to you, our fellow state and local government employees.**

# MAINE STATE ARCHIVES ORGANIZATION CHART

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## **RECORDS MANAGEMENT SERVICES DIVISION**

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The goal of records management is to get the right record to the right person, at the right time, at the lowest possible cost. The purpose of the program is to control the creation, utilization, filing, maintenance, storage and final disposition of state records. Our duties include:

Improving information retrieval;

- ♦ Providing standards, procedures and techniques for effective management of all records, regardless of media;
- ♦ Establishing retention schedules;
- ♦ Providing training for records officers, assistant records officers, and other state and local government employees;
- ♦ Transferring infrequently referenced hard copy records to the State Records Center;
- ♦ Assisting each customer agency with the management of its records.

## **STATE AGENCY RESPONSIBILITY**

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- ♦ The head of each state agency or local government agency shall establish and maintain an active, continuing program for the economical and efficient management of any records in compliance with the standards, procedures and regulations issued by the State Archivist. – from Title 5, §95
- ♦ The head of each agency will appoint a records officer.
- ♦ The records officer will be responsible for the economical and efficient management of all records for that agency, including digital records, in compliance with the policies of the State Archivist.
- ♦ The person chosen as records officer should have a thorough knowledge of the organization and its functions, as well as sufficient authority to carry out the duties and sufficient time to do so.
- ♦ The records officer will appoint at least one assistant (sometimes called associate) records officer for each unit within the agency.

## **THE MAINE STATE ARCHIVES IMAGING CENTER**

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Document imaging systems can improve work flow and efficiency, as well as reduce the need to store paper records in expensive office space. Due to both the installation of such systems at state agencies and the growing number of documents that are "born digital" in the first place, it no longer makes sense for us to operate an in-house unit for microfilming nonpermanent records. We can provide a list of vendors that are able to do this work to the standards required for state records, for any agency that may have a continuing need.

The Imaging Center was originally established to reproduce documents and photographs from Maine State Archives holdings. Microfilming of archival records continues, as does photographic copying when requested. More often, though, we now scan permanently valuable records for easy access and reproduce them using archival-quality printing supplies. Framing services are also available. For reproduction of large format documents, and for creating images of museum artifacts, the Imaging Center uses a digital "scan back" and wide format fine art printer.

Many interesting images are available for sale to other government agencies and to the public. Our eStore at [http://www10.informe.org/webshop\\_ifw/?storeID=5](http://www10.informe.org/webshop_ifw/?storeID=5) offers these items on line. Of course we are also glad to accept orders by telephone and from visitors to our Search Room.

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# BASIC INFORMATION

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## DEFINITION OF A RECORD

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"Record" means all documentary material, regardless of media or characteristics, made or received and maintained by an agency in accordance with law or rule or in the transaction of its official business. "Record" does not include extra copies of printed or processed material of which official or record copies have been retained, stocks of publications and processed documents intended for distribution or use or records relating to personal matters that may have been kept in an office for convenience. – from Title 5, §92

All recorded information, regardless of physical form or characteristics: paper, microfilm, word processing files, spreadsheets, databases, audio recordings, video recordings, e-mails, paper documents scanned to create image files, plus any other formats that may come into use as technology advances;

Made or received in connection with the transaction of official government business; and

Maintained as evidence of the agency's functions, policies, decision, procedures, operations and other activities; or because of informational value.

## DIGITAL RECORDS

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*"Electronic record" means a record whose content is not readable unless retrieved by means of an electronic device such as a computer or an audio or video player.* – from Title 16, §456-A

A digital record is an electronic record that can be retrieved and read only by using a combination of computer hardware and software. It may begin with paper or microfilm source documents subsequently converted to digital images, but most documents in the 21<sup>st</sup> Century office are "born" digital – created as computer files in the first place. Digital records can be stored on personal computers, networked servers, and offline media such as CDs, DVDs, flash drives and magnetic tape. A digital file's content, not its format or storage location, determines its status – record or nonrecord – and its retention period. Whether it is an e-mail message, a word processing document, spreadsheet, database, presentation, image file, Geographic Information System layer, or anything else digital, it is a state record if created or received in the course of state business.

## RECORD SERIES

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A group of identical or related records (or, in more modern terms, a group of records created by the same business process that document the same type of transaction).

Examples: case files of an institution; invoices; transitory correspondence.

Documents in the same record series are normally filed as a unit, whether in a drawer of paper records, a computer subdirectory, or an e-mail folder.

Some characteristics of a record series are:

- ♦ Produced by the same activity;
- ♦ Documents a certain kind of transaction;
- ♦ Relates to a particular subject;
- ♦ Arranged under a single filing system;
- ♦ Retained for the same period of time.

**Records inventories and schedules deal with records in series rather than as separate folders or documents. DO NOT combine series when inventorying or developing schedules as it can cause problems later on.**

## ARCHIVAL DIGITAL RECORDS

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- ♦Contact Records Management with specific questions on what to do.
- ♦Do not delete files from a departing employee's PC or from that employee's files on the agency's server(s).
- ♦Do not delete the contents of a departing employee's e-mail box and .pst (archive) files.
- ♦Do not burn files onto a CD or DVD and deliver them to the Archives.

## E-MAIL RETENTION

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E-mail is subject to the same retention requirements as paper correspondence, based on message content.

If you delete unneeded e-mail you can more easily find what you are looking for, especially if you use Outlook's folder capabilities to file messages in a logical manner.

Organizing and managing e-mail (and other files) will save space, provide more efficient access, and make it easier to maintain confidentiality when that is required.

Organizing and managing e-mail will reduce going through outdated records in response to legal discovery proceedings and FOAA (Freedom of Access Act) requests. It will also give you authority to delete files due for destruction, which means that you cannot be held liable for failing to produce those files if – unlikely thought it may be – someone requests them later on.

When an employee leaves a position, computer files (including e-mail) may not be deleted for that reason only!

Not all e-mail systems create automatic backups of your files. Those that do this are not substitutes for your own file management, since backups are overwritten periodically and do not distinguish among subjects, acknowledge retention periods, or otherwise organize the messages in any way except according to transaction date and sender/recipient(s). A backup is not a recordkeeping system.

## PURPOSE OF RECORDS RETENTION SCHEDULING

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*The first step in gaining control of your agency's records is to find out what records exist!*

Your agency needs to know how long to keep its records, and what to do with them afterward. Should they be destroyed, or should they be preserved permanently at the Maine State Archives? Records retention scheduling organizes your agency's records into series (more about that later), and sets a retention period for each series. It also establishes the correct disposition – destroy or transfer to Archives – for each series.

- ♦Records retention schedules drive an agency's records management program;
- ♦Schedules provide the guidance necessary to prevent unneeded records from cluttering agency offices;
- ♦Schedules provide the guidance necessary to preserve mid to long-term records until they have served their purpose.

**Title 5 §95 requires that all state government records be covered by retention schedules. This includes records that never leave the creating agency's custody.**

Retention schedules for digital records work about the same way as for paper, microfilm, and other "traditional format" records. The state is working toward implementing a records management/content management system that will make it much easier for individual employees to classify their "born digital" records, including e-mails and related file attachments. Meanwhile, we will work with you in applying your agency's retention schedules to your digital records. The most important principle to remember is this: **Content, not format, determines retention.**



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# CREATING NEW SCHEDULES

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## APPLICATION FOR RECORDS RETENTION SCHEDULE

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The first step in creating a new schedule is completing an Application for Records Retention Schedule (MSA/RM 22). This form can be downloaded from <http://www.maine.gov/sos/arc/records/state/strecforms.htm>. You cannot fill it out on line – you must save the form to your computer and then complete it.

The application provides general information about the records you want to schedule, such as the creating agency, series title, and proposed retention period. It serves as a cover or “batch” sheet for the Records Series Inventory form (or forms) to follow.

## RETENTION PERIODS

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**Total Retention Period = Time retained in agency + Time retained in Records Center**

Determining the appropriate retention period for records requires taking a look at their value to the creating agency, and then another look at their possible **enduring** (long term, possibly permanent) value to researchers.

Some questions to ask:

**Administrative use:** *What is the value of these records in carrying out your department's functions? How long are they needed for **immediate** retrieval?*

**Legal requirements:** *Is a certain retention period necessary to comply with a statute or the rules of other agencies, or for protection of someone's legal rights and interests? Are Federal retention periods involved?*

**Fiscal requirements:** *How much time must you allow for fiscal requirements such as audit or budget?*

**Historical or research purposes:** *Do these records document important events, or the history and development of your department?*

## ARCHIVES OR DESTROY?

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**500 years from now, will someone want to use these records?**

**YES** - This series may belong in the Archives **NO** - The records should be destroyed when your agency no longer needs them

About 5% of Maine state government records have enduring value sufficient to justify transferring them to the Maine State Archives.

From time to time, a document or file within a record series scheduled for destruction may appear to be permanently valuable. On the rare occasion you think you have such a document or file, please call us at 287-5798. We will arrange for an archivist to appraise your “find.”

## THE RECORDS SERIES INVENTORY

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Complete a separate Record Series Inventory (MSA/RM 59) for each series listed on the Application for Records Retention Schedule.

The Record Series Inventory form can be downloaded from <http://www.maine.gov/sos/arc/records/state/strecforms.htm>. This form supplies detailed information about each series to be scheduled (description, cubic feet of hard copy records that exist and require storage, justification for proposed retention period, proposed disposition of Archives or destroy). The Record Series Inventory form must be accompanied by “live” samples, which means no blank forms. It is acceptable with sensitive records for the agency to black out (redact) confidential information, or to submit a form completed with fictional data; but there must be samples, to show what is in the series.

## AMENDING AN EXISTING SCHEDULE

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After a retention schedule has been approved by the Archives Advisory Board, your agency may need to change it. You might need to do this because of a change in statute, in a Federal regulation, in your agency’s policies, in your business needs, or simply because experience with the records tells you that they are being accessed more or less frequently than you expected when writing the current schedule.

Download the Application for Records Retention Schedule form. Mark the application “amendment” and fill in the following information: series number; series title; new retention periods; schedule number. Be sure to check “change in retention” as the reason for the amendment.

We do not require an amendment for a change of media. Unless the series has a disposition of Archives, the media your agency chooses to maintain and use the record copy – the copy to which you apply the full retention period – is strictly a business decision.

When changing a record series description, you need to submit 2 documents:

- ▷ An Application for Record Retention Schedule (marked “amendment”), and
- ▷ A record series inventory updated to reflect the change of description.

**Also, please include samples of any added documents.** You may need to file such an amendment if the documents the series includes have changed, which usually happens when the program itself has changed. You do not need to change the description for minor alterations in the documents the series includes.

# GENERAL SCHEDULES

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General Record Schedules provide disposition standards for records common to several or all state agencies. Each includes:

- ♦Record series numbers.
- ♦Record series descriptions.
- ♦Which agency holds the **record copy**, and the record copy's required retention period and disposition.
- ♦The retention period for agency copies of the same record.

## Brief definitions:

The **record copy** is a single copy of a record retained by its assigned custodian as the official record of a government transaction.

The **agency copy** is kept by the agency that initiates the transaction. Agency copies are not convenience copies which may be destroyed when no longer useful, because they may not be exact duplicates of the record copies that the creating agency has sent for processing. The General Schedules require agency copies to be retained for specific time periods.

## Examples:

The Bureau of Human Resources maintains the record copies of employee personnel records. Each agency maintains its own copies of these records, too, and must do so according to the requirements of General Schedule 10.

The Division of Purchases maintains record copies of contracts with vendors. Each agency that sends contracts to Purchases for processing and approval also maintains its own copies of these contracts, which must be kept for the retention period required by General Schedule 1.

*Before* submitting a new Application for Records Retention Schedule, please check to see if a General Schedule exists for the records. The General Records Schedules may be viewed or downloaded online at:

<http://www.maine.gov/sos/arc/records/state/gensched2.html>

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# THE STATE RECORDS CENTER

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## ***General information***

You can request retrieval of your records from the Records Center on any work day between 8 a.m. and 4 p.m. The Records Center provides its customer agencies with centralized, economical storage for their inactive (sometimes called semi-current) and pre-archival government records.

## **When should records go to the Records Center instead of remaining at your agency?**

### **⇒In-office records retention (active or current records)**

All records used frequently (more than once a month per file drawer) should be kept at your office.

### **⇒Records Center retention (inactive, semi-current or pre-archival)**

Records used less than once a month, but still needed for legal, administrative or referencing reasons, should be sent to the Records Center. (Pre-archival records are scheduled for a disposition of Archives, but are temporarily stored in “Records Center status” — that is, still under your agency’s control — because you may need to use them from time to time.)

*All records in the Records Center, and all pre-archival records in Records Center status, belong to the agencies that created them.*

## **ACCESS TO THE STATE RECORDS CENTER**

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Only those persons who have been issued an *Authorization for Records Center Use Card* (MSA/RM 32) may order records retrieved.

Records Officers should use the Application for Authorization for Records Center Use Cards, available for download at <http://www.maine.gov/sos/arc/records/state/strecforms.htm> to order cards. Only Records Officers and Assistant Records Officers may make this request.

We do not issue photo IDs. Please have both your access card number (it is printed on your card) and your driver’s license, security badge, or other photo ID ready if you want to pick up files in person. We will need to make sure we are giving the files only to someone authorized to have them.

Access cards are not transferable. Do not assume that you can use a colleague’s card, and do not lend your card to anyone else.

Records Officers are responsible for notifying us of all changes in access authorizations. When a cardholder leaves the agency, the Records Officer must tell us so we can cancel the card. We also need to know if a cardholder whose duties have changed should no longer be allowed to order records, or should have different access restrictions.

We do an ongoing review to delete the names of employees who are no longer authorized for Records Center access.

## RECORDS RESEARCH AND RETRIEVAL

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### *Retrieving your records from the State Records Center*

You may request records by e-mail, fax, telephone, or mail. *If we receive correct and complete referencing information, we will put the requested records in our outgoing mail within 24 hours – excluding days when state offices are closed – or notify you that they are ready for pickup, if you prefer.*

Please use *Request for Reference Service Form* (MSA/RM 70) to order records in writing. You can find this form on line at <http://www.maine.gov/sos/arc/records/state/strecforms.htm>.

**We prefer e-mail requests whenever possible!** ([RecordsCenter.Archives@maine.gov](mailto:RecordsCenter.Archives@maine.gov))

E-mail requests prevent transcribing errors. They also save time that we must otherwise spend writing down what we think we hear in a telephone message. e boxes out of your office!

## TRANSFERRING RECORDS TO THE STATE RECORDS CENTER

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### *Getting Records Out of Your Office*

*The Archives Advisory Board and the State Archivist must approve your retention schedule before we can accept records for transfer to the Records Center.*

#### **Materials required**

Records Center Boxes (we cannot accept records packed in other containers). You can order these from the Central Warehouse: A001, 10 per bundle.

Transmittal of Records Form (MSA 33). You can download this form from <http://www.maine.gov/sos/arc/records/state/strecforms.htm>.

Packing list (also available from <http://www.maine.gov/sos/arc/records/state/strecforms.htm>).

#### **Packing Boxes**

Please use labeled folders in sequential order, which may be alphabetical or numerical.

**DO NOT OVER LOAD OR STUFF RECORDS INTO THE BOXES!!!** Each box should be about 4/5 full.

Do NOT mix different record series in the same box. We need to track the retention period for each box on our database, and we cannot do this efficiently if the box contains more than one series.

Do NOT pack hanging (“pendaflex”) folders in the box. This wastes space as well as supplies, and it also makes the boxes heavier for your staff and ours to handle.

*Clearly and accurately labeled folders, along with correct and complete itemized lists inside the boxes, will help us retrieve your records quickly.*

#### **Marking Boxes**

- Using a black marker, write the following on each box (on the long side):
- Box number
- Arrangement (this is simply the first and last file in the box)

*Record Center staff will add the agency number, retention date, and assigned location number.*

**We STRONGLY recommend that you place an itemized list in each box and keep a copy for your own records. This helps us retrieve what you request, and it leave no doubt as to whether or not a record was in the box when it came to us.**

## REQUIREMENTS FOR PACKING BOXES

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1. Please use **new** Records Center boxes. Recycling and reusing can be wonderful for some things, but not for cardboard containers that must be marked clearly and must stand up to years of handling.
2. Arrange files first by the year's closing date, then alphabetically or numerically within that year. Only one fiscal or calendar year per box, please. The Records Center Supervisor must receive a corresponding transmittal in advance, with enough time to review it and contact you if there are questions before delivery or pick up. Please do not add boxes to a transmittal without the Records Center Supervisor's approval.
3. Do not overstuff boxes. Each should be no more than 4/5 full.
4. Please place an itemized packing list in the box.
5. Do not mix different record series in the same box.
6. Number your boxes consecutively, with no duplicate box numbers. If you use the same box numbers on different transmittals, it will be harder for our staff to shelve the boxes; and it will also make retrieval more difficult.
7. On the outside of the box, list the first and last file inside it.
8. Unacceptable boxes include those containing hanging folders or three ring binders; reused, old, improperly marked boxes; overstuffed boxes; boxes with broken handles. Records Center staff will be referencing this material; and the easier it is for us to handle your boxes, the better they will protect your records. This also helps keep our staff members safe.

**"Archives" (as some customers also call the Records Center) will accept only boxes that meet the criteria just listed. We may refuse pickup or delivery if these requirements are not met.** This helps us to provide the best possible service to our customer agencies. If you have questions, please call 287-5792 (Records Center Supervisor).

**INCLUDE INFORMATION**  
**ON BOTH ENDS OF THE BOX!**

<b>AGENCY USE</b>		<b>AGENCY USE</b>	
<b>Maine State Archives</b>			
<b>Box Contents</b>	<b>Box Number</b>	<b>ARCHIVES USE ONLY</b>	
<b>Location Number</b>	<b>Disposition Date</b>	<b>ARCHIVES USE ONLY</b>	
<b>ARCHIVES USE ONLY</b>			

## TABLE OF EQUIVALENTS

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Standard Record Center Box = 1 Cubic Foot

Type	Size	Volume	Cubic Feet
Standard File Cabinet	Letter 8 1/2" x 11"	1 full drawer	1.50
	Legal 8 1/2" x 14"	1 full drawer	2.00
Lateral File Cabinet (39" drawers)	Letter 8 1/2" x 11"	1 full drawer	2.50
	Legal 8 1/2" x 14"	1 full drawer	3.00
Shelf Files (15" x 36")	Letter 8 1/2" x 11"	1 full shelf	3.00
	Legal 8 1/2" x 14"	1 full shelf	3.40
Index Cards	3" x 5"	12,000 cards	1.00
	4" x 6"	6,000 cards	1.00
	5" x 8"	4,800 cards	1.00
Microfilm	16mm x 100'	90 reels	1.00
	35mm x 100'	44 reels	1.00

## COMPLETING THE TRANSFER

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### *From your office to the State Records Center or Archives*

The Records Center Supervisor will process your transmittal, and will contact you to arrange pick up or delivery. (*We pick up boxes only in the Augusta and Gardiner area*)

After the Records Center has received your boxes, we will complete the Transmittal of Records Form with box locations and return it through the Records Officer to the contact person listed.

The contact person should then attach the itemized list of box contents to the Transmittal of Records Form. This will create a complete record of what is in the boxes and where they are located in the Records Center!

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# GUIDELINES FOR SAFE TRANSPORT OF STATE RECORDS

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## **Use a covered vehicle!**

It's amazing, and frightening, what can happen to records in the bed of an open pickup truck. The boxes can come open – the vehicle can drive through an unexpected rain shower – someone can decide to open a box and rummage through it, if the driver has to stop and leave the vehicle unattended. A tarp and tie-downs are better than nothing, but transporting State records in an open vehicle is always an invitation to trouble.

## **Handle boxes carefully, and make sure anyone else who will be handling them knows you expect this, too.**

Why would anyone stand on a box filled with State records, in order to reach something else on the truck? Without thinking that the box might collapse, and that wouldn't do much for the records inside it? This has happened before, and we don't want it (or anything similar) to happen again. Take a moment to make sure the people who will be performing the transfer know that the boxes contain official State documents, and must be handled with reasonable care.

## **Make sure you know what will happen if a hired carrier can't pick up the boxes from you, and deliver them to us, all in the same day.**

Your contract with the moving company should specify how they will secure your records if they have to hold them overnight. Ideally, this shouldn't happen at all; but experience tells us that it can. And sometimes will.

## **Make sure your contract with a hired carrier specifies that the vehicle's cargo compartment must be kept locked at all times, except during loading and unloading (and will not be left unattended, even briefly, during the loading and unloading processes).**

## **Specify that the boxes will be stacked no more than three high.**

This will avoid collapsed boxes and crushed, damaged records.

## **Palletized boxes should be shrink wrapped to keep them from shifting during transport.**

Another way to avoid crushing, bursting open of boxes, and the resulting damage. Loads do shift, even when carefully packed. If you're using a commercial shipper, the company should be able to protect your records by doing this.



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# THE LEGAL DESTRUCTION OF RECORDS

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## ***When Records Management destroys records***

We destroy records stored in the Records Center only after:

1. The Records Center Supervisor sends a *Records Center Disposition Notice* (MSA/RM 72) to the agency of record;
2. The Records Officer approves the disposition;
3. The Records Officer returns the form to the Records Center Supervisor;
4. Maine State Archives reserves the right to destroy records that have passed (by 10 months) their expired retention date. The need for Archives involvement occurs when the generating agency refuses to sign off on the destruction of the records. (Warehouse space is always at a premium)

*This is the Records Officer's opportunity to double check and make sure the records are not needed for an uncompleted audit, anticipated litigation, or other need that the retention schedule did not anticipate.*

## ***When your agency destroys records***

Agencies may destroy records according to approved retention schedules.

Records should be destroyed in a confidential manner (preferably by shredding). The State of Maine's contractor for waste paper provides shredding as part of its routine service. That was not true with past recycling contractors, though; and it may not always be true in the future. If in doubt, you must check. It is your agency's responsibility to make sure its records are destroyed without breach of confidentiality.

The key to confidential destruction is keeping your records secure until they are picked up or processed by the contractor. Do NOT store them to wait for pickup in an area accessible to the public, such as a loading dock, hallway, or conference room.

Even if the files are not confidential in the legal sense, no agency wants to be the subject of a news story about records that were supposed to be picked up for destruction — but instead wound up intact and outside of the State of Maine's possession. We have all read accounts of documents found in dumpsters, scattered along roadsides, or even picked from landfills by concerned citizens.

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# PURCHASING RECORDS MANAGEMENT EQUIPMENT

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## HOW TO PURCHASE RECORDS MANAGEMENT EQUIPMENT

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***To order filing, microfilming or imaging equipment***, you must fill out a *Records Management Expenditure Request* (MSA/RM 94). You find the form online at:  
<http://www.maine.gov/sos/arc/records/state/strecforms.htm>

- Your expenditure request must be approved by the Director of Records Management Services.
- Send the form directly to the Director at 84 SHS and hold your requisition or contract release until you receive his approval.
- The Director will approve your request and return a copy to you. The original will be sent directly to the Division of Purchases to be matched up with your order, which you can then send in. If the request cannot be approved as submitted, you will be contacted by Records staff who will explain the problem. This can nearly always be resolved, because no one wants to stop you from getting what you need. Records Management must make sure that records you plan to store or convert to another format have retention schedules, and that any conversion work is being done by an approved vendor.

***Supply all information requested on the form, including the schedule and series numbers.***

***If no retention schedule has been approved for the affected records, you must submit an Application for Records Retention Schedule, Record Series Inventory Form and record samples with the request.***

*We will gladly defer the scheduling process for up to six months, though, if the records relate to a new program, new position, or new agency function. If this is the case, please tell us so on the form.*

The MSA/RM 94 is also required for purchase of such records storage equipment as shelving, filing cabinets, and form racks, and to contract for records conversion services such as microfilming or microfiching.

***When in doubt, please call us before you select the equipment or vendor and prepare the paperwork!***

### ***Why all this red tape?***

Poor equipment selection can sentence an agency to years of inefficient reference activity and uneconomical storage. We want to make sure that you are purchasing the equipment and/or services best suited to your needs.

ALSO, we want to make sure that you have scheduled all the records that you plan to store!

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# VITAL RECORDS YOU CAN'T AFFORD TO LOSE

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## What are "vital records"?

Vital records are all records needed to recreate an agency's legal and/or financial position and to preserve the rights of that agency, its employees, and the general public. In other words, vital records are those which are absolutely essential for the continued operation of your agency.

## Why are they vital?

If your agency had a fire, how long would it take to reconstruct the information you would need to continue doing business and how much would it cost? How much employee time would be required, and what would that time cost? Can you even assign a dollar value to the aggravation and to the negative impact on your customers?

## Ways to protect your hard copy vital records:

- Scan these records and store a backup copy off site – preferably in another city.
- Have them microfilmed by an approved vendor.
- Store vital records which are not currently active at the State Records Center.
- Store active vital records in a fireproof vault.
- Use fireproof cabinets for active vital records (Note: Simply using a fireproof safe or cabinet designed for important papers is not enough. Paper will begin to char around 400°F. Magnetic tapes become unreadable at much lower temperatures than paper ignites, so you want to purchase a safe or cabinet that prevents internal temperature from rising above 125°F for at least 1 hour during exposure to fire at 1500°F.

## To protect your vital digital records:

- Make sure they are stored on a file server, not on PC hard drives, so that they will be backed up regularly.
- Keep the software used to access your vital digital records as up to date as possible. After any major software update, such as going to a new version of the product, make sure your older vital records continue to open without problems.

Be very careful of software products not specifically approved for agency use. When in doubt, always contact your agency's IT support or HelpDesk.

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## IF DISASTER STRIKES

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### *Fire, flood, explosion or any other non-computer virus disaster:*

Call the Maine State Archives Safety Officer: 287-5795

### *If you discover a computer virus*

1. STOP using your machine IMMEDIATELY! Do not try to fix the problem yourself.
2. Call the Office of Information Services Help Desk at 624-7700, or your own agency's Help Desk if you have one that is separate from OIT.
3. Leave the screen as it is, so the person who responds can see exactly what you saw.

*Off-site storage of backups is a strong defense against two serious threats, physical theft and natural disaster. Information services staff makes sure all State of Maine servers are backed up daily, so – once again – store your files on a server! Not on your PC's hard drive, which is the default storage location for most programs (Microsoft Office included)!*

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# GLOSSARY

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**Active Records:** Records that are referred to more than once a month per file drawer. They are normally maintained within the agency of record.

**Administrative Value:** That usefulness of a record which is determined by the minimum length of time required to have the record or record series available in the agency office for the conduct of day-to-day operations; generally, administrative value is inherent through program or project completion or the completion of a business transaction.

**Agency of Record:** The office responsible for maintenance and disposal of the records it creates and receives in performing its official functions.

**Archives:** The facility designated as the repository for the preservation of permanent records of the State of Maine. The State Archives is responsible for selecting, preserving and making available archival records.

**Attachments:** All files that can be joined to an e-mail message, and transmitted with it from sender to recipient. Types may include, but are not limited to: Word processing documents; spreadsheets; databases and "snapshots" from databases; images.

**Confidential Records:** Those records which are not generally available for examination by the public as stipulated by state or federal legislation or regulations.

**Cubic Foot:** A standard measure of volume for records, 12 inches high, 12 inches thick. The volume of records that will fill a standard records storage box.

**Digital Records:** Records created using computer hardware and software, that can only be retrieved and read by using a hardware/software combination.

**Disposition:** The various actions taken with records, normally after they become inactive. These actions include reproduction on microfilm, transfer to the State Records Center for temporary storage, transfer to the State Archives for permanent preservation, and destruction.

**Electronic Records:** Records that cannot be read without the use of electronic equipment. Electronic records include both digital (computer) records, and analog records such as nondigital audio and video recordings.

**Evidential Value:** The usefulness of records which document the history of an agency's organization and function. It may also describe data necessary for legal purposes.

**File Arrangement:** The manner in which a record series is organized in a file, e.g. alphabetically, numerically, chronologically.

**Fiscal Value:** That value of a record which is determined by state and/or federal audit requirements or by the informational value relating to financial transactions and obligations of the agency.

**Forms Management:** The function that establishes standards for the creation, design, analysis, and revision of all forms within an organization and assures that they are designed, produced, and distributed economically and efficiently

**Frequency of Referral:** The number of times a record series is referenced during normal business activities. Daily? Weekly? Once a month? Once a year, or rarely if at all?

**General Retention Schedules:** Disposition schedules which apply to all offices within a particular branch of state government. They are prepared for records which are common to most agencies.

**Historical Value:** The long-term value of a record to scholars or to posterity, as determined by the Archives Advisory Board and the State Archivist.

**Inactive Records:** Records which are no longer referred to in the conduct of current business. They are normally transferred to the Archives if permanently valuable, or destroyed if no longer of value to the State of Maine.

**Informational Value:** The value of a record that provides unique and permanent information for purposes of research; relates to archival record analysis.

**Lawful Custodian of Records:** The head of a state department, office commission, board, or other unit of state government, or his/her authorized deputy, or the custodian to whom the records were transferred pursuant to law.

**Legal Size:** A standard paper size, 8 1/2 X 14, or a container capable of holding legal size papers or records.

**Legal Value:** That value of a record which is determined by statutory provisions of Maine State Statutes, Federal Code of Regulations, and any other applicable provisions or the value inherent in records that provide legal proof of a business transaction.

**Letter Size:** A standard paper size, 8 1/2 X 11 inches, or a container capable of holding letter size papers or records.

**Metadata:** Data about data. Specifically, for the purposes of State of Maine electronic records management, data concerning an electronic record's creation (creator and date of creation), transmission, editing, viewing, and any other details captured by the particular system being used to create, transmit, and store that record.

**Microfilm:** A high resolution film containing an image greatly reduced in size from the original; the recording of microphotographs on film.

**Micrographics:** A term applied to the uses of microimage recording, retrieval, and reproduction technologies in an information system.

**Monitoring:** Checking the electronic files maintained by state agencies to verify compliance with state records management standards.

**Non-Record:** A convenience copy such as a reading file, unofficial copies kept for reference, stocks of publications, blank forms, and non-government related publications. Also, personal records such as e-mail messages unrelated to State of Maine business.

**Permanent Record:** Records considered to be so valuable or unique in documenting the history of an agency that they are designated for preservation in the Maine State Archives.

**Pre-Archival Records:** Records scheduled for preservation in the Maine State Archives, but currently stored in Records Center status.

**Public Records:** The original and all copies of any paper, correspondence, form, book, photograph, photostat, film, microfilm, sound recording, map drawing or other document, regardless of physical form or characteristics, which have been made or received in transacting public business by the state, a political subdivision, or an agency of the state. *(For the complete legal definition, see Title 1, §402.)*

**Purging:** Removal of individual papers, folders, or groups of folders from a larger group of records, usually to permit disposal of parts of the group and retention of the selected portions. Eliminating material before it is stored.

**Records:** All books, papers, photographs, maps, or other documentary materials, regardless of physical form or characteristics, made or received in connection with the transaction of public business, which are maintained because they serve as evidence of the functions, policies, decisions, procedures, operations and other activities of state organizations or because of informational value contained therein.

**Records Inventory:** An identification and description of all of the records possessed by an organization.

**Records Management:** That function of administrative management and business operations concerned with the creation, protection, retention, retrieval, and preservation of records and recorded information required for the continuance of operations.

**Records Officer:** An employee appointed by the director or administrator of a state agency to represent the agency in records management matters and to function as a liaison between the agency and the Division of Records Management Services of the Maine State Archives.

**Records Retention Schedule:** A timetable that identifies the length of time that a record must be retained in active and Records Center status before final disposition, either through destruction or transfer to Archives.

**Records Retrieval:** The process of locating and delivering records for agency use.

**Records Series:** A group of identical or related records that are normally used and filed as a unit.

**Security Microfilming:** The process of filming documents while continuing to retain the original documents. The film serves as a back up to the original. This procedure is usually applied to records judged to be vital to an agency's operation.

**Semicurrent Records:** Records that, on average per cubic foot, are referred to only once or twice a month. These records should be sent to the State Records Center.

**Shredding:** The destruction of documents and microfilm by mechanical shredding, pulping, or beating to render them illegible and beyond reconstruction.

**State Records Center:** The facility designed for the organized storage of inactive (semicurrent) records retained for administrative or legal purposes.

**State Records Management Standards:** Requirements included in the Archives and Records Management Law (Title 5, Chapter 6, §95); in rules adopted by the Maine State Archives under the Administrative Procedures Act; and in retention schedules approved by the State Archivist.

**Transfer:** The movement of records from one location or custodian to another, usually moving records from the active files to inactive files or from agency office space to a records center or an archival establishment.

**Unscheduled Records:** Records or record series for which no decision on disposition has been made and which must be preserved until legal authority on disposition has been approved.

**Vital Records:** Records which are absolutely essential to continue and/or reconstruct the operations of a state agency or office subsequent to an emergency arising from enemy action or a natural or man-made disaster such as flood, fire, tornado, riot, explosion, etc.; those records which are necessary to recreate the agency's legal and financial position and to preserve the rights of the agency, its employees, and the general public.

**Working Papers:** Documents such as rough notes, calculations, or drafts assembled or created and used in the preparation or analysis of other documents.

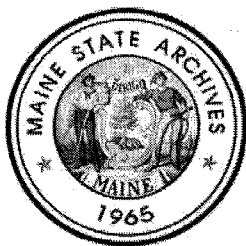
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## CONTACT INFORMATION

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Scheduling & Consulting, Felicia Kennedy .....	287-5798
Records Center***, 101 Water St Hallowell.....	287-3627
Records Research & Retrieval	
Records Center Supervisor, Rob Caron .....	287-5792
Office Associate II, Bill Towne .....	287-3627
Transfers/pickups	
Records Center Supervisor, Rob Caron .....	287-5792
Office Associate II, Bill Towne .....	287-3627

\*\*\*If the Records Center phone is not answered, please call 287-5792.



**Maine State Archives**  
 84 SHS, Augusta, ME 04333-0084  
 Tel. (207)287-5792 Fax (207)287-6035

## Application for Records Retention Schedule

Department	Bureau/Division	Date
Agency Records Officer	Mailing Address	Telephone Number

**Certificate of Agency Representative:**

I hereby certify that I am authorized to act for this agency in matters relating to the disposal of its record series as described in this Records Retention Schedule. These records will not be needed for current business after the retention period(s) specified.

Date	Signature of Agency Records Officer
------	-------------------------------------

☐ New Schedule    ☐ Amendment to Existing Schedule

If amendment, please indicate reason:

☐ Change in retention (please give justification)

☐ Other (describe)

Series No. <small>(if Amended)</small>	Series Title	Media Type*	Retain in Agency**	Retain in Center**	Total Retention Period	Destroy or Archives	Action Taken <small>(Leave Blank)</small>

\*See Inventory Form for media examples. \*\*Give amount of time in agency and in Records Center (i.e. no. of years, contingent upon event, less than one year, permanent, etc.)

### Maine State Archives Use Only

**Notification to Agency:**

This Records Retention Schedule is approved except as noted in the "Action Taken" column.

Agency No.	Schedule No.
Date	Signature of State Archivist

MSA/RM 22/R rev. 062012



Maine State Archives <b>RECORD SERIES INVENTORY</b>	For Maine State Archives Use Only		
	Agency No.	Schedule No.	Series No./Media

Department		Bureau/Division		Date
Person to Contact		Telephone No.	Location of Records	
Contact person's mailing address				
Series title				
<p>Why does the agency keep these records—what program or programs do they support? How are the records used, and by whom? What might be found in a typical file? <i>(Please include samples with inventory form; you may black out identifiable personal information if this raises confidentiality concerns. Also, please spell out all acronyms.)</i></p>				
<p><b>Frequency of Use</b>  <input type="checkbox"/> Daily <input type="checkbox"/> Weekly <input type="checkbox"/> Monthly <input type="checkbox"/> Annually For how long _____</p> <p>At what point does each file become "closed" as far as your business needs are concerned? Possible examples: When client is discharged; when fiscal year ends; when case has been inactive for six consecutive months.</p>				
<p><b>Arrangement</b>  <input type="checkbox"/> Alphabetically  <input type="checkbox"/> Chronologically  <input type="checkbox"/> Geographically  <input type="checkbox"/> Case number  <input type="checkbox"/> Other _____</p>	<p><b>These records are retained by</b>  <input type="checkbox"/> Calendar Year (1/1 – 12/31)  <input type="checkbox"/> State Fiscal Year (7/1 – 6/30)  <input type="checkbox"/> Federal Fiscal Year (10/1 – 9/30)</p>		<p><b>Media Type</b>  <input type="checkbox"/> Paper <input type="checkbox"/> Microfilm <input type="checkbox"/> Microfiche  <input type="checkbox"/> Audio Tape <input type="checkbox"/> Digital Audio <input type="checkbox"/> Magnetic Tape  <input type="checkbox"/> Photograph <input type="checkbox"/> DVD/Video <input type="checkbox"/> Electronic  <input type="checkbox"/> Computer Disk  <input type="checkbox"/> Other _____</p>	
Date of Oldest File	Volume In Cubic Feet if Applicable	Annual Rate of Accumulation if Applicable	Filing and Storage Equipment <i>(How are records stored)</i>	
Can the same information be found in other records? <i>(If yes, please explain. We are asking this because it's important to know where the State would go to reconstruct the records, in case of disaster.)</i>				
Are records confidential? <input type="checkbox"/> no <input type="checkbox"/> yes If yes, which statutes or regulations apply?				
Retention determined by <input type="checkbox"/> Statute <input type="checkbox"/> Agency Policy <input type="checkbox"/> Other <i>(Please give statutory citation or identity of person who determines policy)</i>				
How long do you need to store these records (total for paper files should not exceed 20 years):				
In Your Agency	In the Records Center	Archives or Destroy <i>(your recommendation)</i>		
Signature of Agency Records Officer or Assistant Records Officer				Date

MSA/RM 59/Rev. 072012





# MAINE STATE ARCHIVES

Records Center

84 State House Station, Augusta, ME 04333-0084

Tel. (207)287-5792 Fax (207)287-6035

[RecordsCenter.Archives@Maine.gov](mailto:RecordsCenter.Archives@Maine.gov)

## REQUEST FOR REFERENCE SERVICE

Executive or Judicial Agency			Date of Request	
Files Requested (file name and/or file number):			Box No.	Location No.
Name of Requestor	Access Card No.	Telephone	FAX	E-Mail
<input type="checkbox"/> Mail file requested to the address listed here:				
<input type="checkbox"/> Hold for pickup and call this number when file becomes available:				
File requested by: <input type="checkbox"/> Fax <input type="checkbox"/> Visit <input type="checkbox"/> Mail <input type="checkbox"/> E-mail <input type="checkbox"/> Telephone				
Type of Record: <input type="checkbox"/> Paper <input type="checkbox"/> Magnetic Tape <input type="checkbox"/> Microfilm <input type="checkbox"/> Microfiche <input type="checkbox"/> Other (please specify)				

MSA/RM RRS/Rev. 062012

**Maine State Archives**  
 84 SHS, Augusta, ME 04333-0084  
 Tel. (207)287-5792 Fax (207)287-6035

For Maine State Archives Use Only

Page 1 of

# TRANSMITTAL OF RECORDS

Agency No.

Transmittal No.

Department		Bureau		Division		
Person to contact		Telephone	Location (building, floor, room)			
Mailing address			Retention (to be inserted by RM staff)			
Restrictions on access		Authority		These records are retained by (please check one): Calendar Year      State Fiscal Year      Federal Fiscal Year <input type="checkbox"/> (1/1 – 12/31) <input type="checkbox"/> (7/1 – 6/30) <input type="checkbox"/> (10/1 – 9/30)		
Schedule No.	Series No.	Media	Series Title (See Records Disposition Schedule – use same title)		Are all records included closed and inactive?	
Location (leave blank for RM use)	Agency Box Identifier	First Item		Last Item		Final Dispo. (leave blank for RM use)
Signature of Records Officer (if e-mailed from a State address, typed name will be sufficient):			Date	Received by (Maine State Archives):		Date

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Packing List for Box No.:  
Page \_\_ of \_\_

[illegible]

RM 34.0705



**Maine State Archives**  
 84 State House Station, Augusta, ME 04333-0084  
 Tel. (207)287-5790 Fax (207)287-6035

## RECORDS MANAGEMENT EXPENDITURE REQUEST

Department	Bureau/Division	Agency No. <i>(per State Budget Office)</i>	Date
Person to Contact	Tel. No.	Mailing Address	
Equipment or services requested <i>(indicate quantity and type of equipment, supplies, or services; please be specific)</i>			
Title(s) of Record Series to be stored, filmed, or imaged <i>(use same wording as on applicable retention schedule, please):</i>		Schedule No.	Series No.
<b>If no schedule has been approved for the above records, an APPLICATION FOR RECORDS RETENTION SCHEDULE (RM22), RECORD SERIES INVENTORY (RM59), and samples of the records must accompany this form.</b>			
Justification:			
Signature of Records Officer or Agency Head <i>(may be typed if submitted from a State e-mail address)</i>			Date
<b>FOR MAINE STATE ARCHIVES USE</b>			
This request has been reviewed by the Maine State Archives for need and feasibility. The proposed procurement is: <div style="text-align: center;"> <input type="checkbox"/> Recommended    <input type="checkbox"/> Not Recommended       </div>			
**Approval of request does not constitute authority to destroy State records**			
Director, Records Management Services			Date

MSA/RM 94/Rev. 062012

## Maine Revised Statutes

[§1976 PDF](#)  
[§1976 WORD/RTF](#)  
[STATUTE SEARCH](#)  
[CH. 163 CONTENTS](#)  
[TITLE 5 CONTENTS](#)  
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**§1975**

**Title 5:**

**§1981**

### ADMINISTRATIVE PROCEDURES AND SERVICES

#### Part 4: FINANCE

#### Chapter 163: OFFICE OF INFORMATION TECHNOLOGY

#### Subchapter 1: CHIEF INFORMATION OFFICER

#### §1976. Use of State Government computer system

**1. Confidentiality.** Computer programs, technical data, logic diagrams and source code related to data processing or telecommunications are confidential and are not public records, as defined in Title 1, section 402, subsection 3, to the extent of the identified trade secrets. To qualify for confidentiality under this subsection, computer programs, technical data, logic diagrams and source code must:

A. Contain trade secrets, as defined in Title 10, section 1542, subsection 4, held in private ownership; and [2001, c. 388, §14 (NEW).]

B. Have been provided to a state agency by an authorized independent vendor or contractor under an agreement by which:

(1) All trade secrets that can be protected are identified without disclosing the trade secret;

(2) The vendor or contractor retains all intellectual property rights in those trade secrets; and

(3) The state agency agrees to hold and use the programs, data, diagrams or source code without disclosing any identified trade secrets. [2001, c. 388, §14 (NEW).]

[ 2001, c. 388, §14 (NEW) .]

**2. Public records.** Except as provided in subsection 1, any document created or stored on a State Government computer must be made available in accordance with Title 1, chapter 13 .

[ 2007, c. 597, §4 (AMD) .]

#### 3. Violation.

[ 2003, c. 176, §2 (RP) .]

#### 4. Penalty.

[ 2003, c. 176, §2 (RP) .]

#### SECTION HISTORY

2001, c. 388, §14 (NEW). 2003, c. 176, §2 (AMD). 2007, c. 597, §4 (AMD) .





**Legislative Subcommittee**

Proposed Draft Prepared by Harry Pringle:  
Confidentiality of parental contact information  
in possession of school administrative districts

**Sec. 1.**           **20-A MRSA §6001, sub-§4** is enacted to read:

**20-A §6001. DISSEMINATION OF INFORMATION**

**1. Federal and state law.** The provisions of this section, the United States Family Educational Rights and Privacy Act of 1974, Public Law 93-380, as amended by Public Law 93-568, and the United States Education of All Handicapped Children Act, Public Law 94-142 govern the dissemination of information about students, as well as written notices of intent to provide equivalent instruction through home instruction and all education records of students receiving equivalent instruction through home instruction.

**2. Internet restrictions.** A public school may not publish on the Internet or provide for publication on the Internet any personal information about its students without first obtaining the written approval of those students' parents. For the purpose of this section, "personal information" means information that identifies a student, including, but not limited to, the student's full name, photograph, personal biography, e-mail address, home address, date of birth, social security number and parents' names.

**3. Dissemination of education records to criminal justice agencies.** A school may disseminate education records as defined in 20 United States Code, Section 1232 g(a)(4) regarding a juvenile if:

- A. The juvenile has not been adjudicated as having committed a juvenile crime;
- B. The education records are disseminated to:
  - (1) Criminal justice agencies; or
  - (2) Agencies that by court order or agreement of the juvenile are responsible for the health or welfare of the juvenile and that have provided the school with a statement describing the purpose of the dissemination; and

C. The education records are relevant to and disseminated for the purpose of creating or maintaining an individualized plan for the juvenile's rehabilitation.

Education records received under this subsection are confidential and may not be further disseminated, except to the court or as otherwise provided by law. The persons to whom the education records are disseminated shall certify in writing to the school that the records will not be disclosed to any other party, except the court or as otherwise provided by law, without the written consent of the juvenile or the juvenile's parent or guardian.

**4. Parental privacy.** The names, home addresses, electronic mail addresses, and other personal information of students' parents are confidential when in the possession of school administrative units. "Personal information" means a parent's:

A. Social security number;

**Legislative Subcommittee**

Proposed Draft Prepared by Harry Pringle:  
Confidentiality of parental contact information  
in possession of school administrative districts

B. Date and place of birth;

C. Telephone number, including a parent's cellular telephone, home facsimile and pager numbers;

D. Credit or financial information; and

E. Username, login information, personal identification number (PIN), password or other unique personal identifiers that enable a parent to access or communicate in a school unit's electronic systems, to obtain access to student education records regardless of where such records are maintained, to obtain notifications from school officials about student attendance, grades, assignments or school-related activities, or to otherwise collaborate in his or her child's education.

For the purposes of this subsection, the term "parent" has the same meaning as in section 5202, subsection 1.

E-mail and Electronic Mail Protections in Maine Law

Title	Section	Sub-§	General subject matter	Language
1	402	3, ¶O	Freedom of Access Act, exclusions from definition of "public record"	<p>(Not a "public record":</p> <p>O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph:</p> <p>(1) "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number; and</p> <p>(2) "Public employee" means an employee as defined in Title 14, section 8102, subsection 1, except that "public employee" does not include elected officials;</p>
4	1806	1, 2	Maine Commission on Indigent Legal Services - confidential records	<p><b>1. Definitions.</b> As used in this section, unless the context otherwise indicates, the following terms have the following meanings.</p> <p>A. "Individual client information" means name, date of birth, social security number, gender, ethnicity, home address, home telephone number, home facsimile number, home e-mail address, personal cellular telephone number, personal pager number and any information protected under the attorney-client relationship.</p> <p>B. "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address, personal cellular telephone number, personal pager number, date of birth and social security number.</p> <p><b>2. Confidential information.</b> The following information and records in the possession of the commission are not open to public inspection and do not constitute public records as defined in Title 1, section 402, subsection 3.</p> <p>A. Individual client information that is submitted by a commission-rostered</p>

B-2

## For Legislative Subcommittee Review August 23, 2012

Title	Section	Sub-§	General subject matter	Language
				<p>attorney or a court is confidential, except that the names of criminal defendants and the names of juvenile defendants charged with offenses that if committed by an adult would constitute murder or a Class A, Class B or Class C crime are not confidential.</p> <p>B. Information subject to the lawyer-client privilege set forth in the Maine Rules of Evidence, Rule 502 or that constitutes a confidence or secret under the Maine Rules of Professional Conduct, Rule 1.6 is confidential.</p> <p>C. Personal contact information of a commission-rostered attorney is confidential.</p> <p>D. Personal contact information of a member of the commission or a commission staff member is confidential.</p>
5	17057	3	Maine Public Employees Retirement System	<p><b>3. Home contact information.</b> Except as provided in this subsection, records of home contact information of members and benefit recipients of any of the programs of the retirement system and of staff members that are in the possession of the retirement system are confidential, not open to public inspection and not public records as defined in Title 1, section 402, subsection 3.</p> <p>A. For purposes of this subsection, "home contact information" means a home address, home telephone number, home facsimile transmission number or home <b>e-mail</b> address.</p> <p>C. This subsection does not apply to the home address of a member or a benefit recipient of any of the programs of the retirement system used only for membership recruitment purposes by a nonprofit or public organization established to provide programs, services and representation to Maine public sector retirees unless the retirement system member or benefit recipient has signed a form made available by the retirement system indicating that the individual does not authorize disclosure of that individual's home address. The retirement system may not provide information under this subsection to an organization if the retirement system has determined that the organization</p>

# For Legislative Subcommittee Review August 23, 2012

Title	Section	Sub-§	General subject matter	Language
				obtained information for the purpose of membership recruitment but used the information for a purpose other than membership recruitment.
5	90-B	7	Address Confidentiality Program	7. Confidentiality. The program participant's application, supporting materials and the program's state <b>e-mail</b> account are not a public record and must be kept confidential by the secretary.
12	10110		Department of Inland Fisheries and Wildlife	<p><b>§ 10110. Hunting and fishing license; confidential</b></p> <p><b>1. Indication of confidentiality.</b> The commissioner shall allow an applicant for a hunting or fishing license to indicate that the applicant's <b>e-mail</b> address is confidential.</p> <p><b>2. Confidential information.</b> If a person indicates that the person's <b>e-mail</b> address submitted as part of the application process for a hunting or fishing license is confidential as provided in subsection 1, that information is confidential.</p> <p><b>3. Exception.</b> <b>E-mails</b> designated as confidential under this section are not confidential to department personnel or law enforcement officers or for purposes of court proceedings.</p>
12	8005	1	Department of Conservation, Bureau of Forestry	<p><b>1. Contact information.</b> Social security numbers, addresses, telephone numbers and <b>electronic mail</b> addresses of landowners owning less than 1,000 acres of forest land statewide and collected by the bureau for the purposes of contacting landowners under section 8611, or received by the bureau in notifications filed under section 8883-B, or in reports received under Title 36, section 581-G are confidential and may be disclosed only in accordance with this section.</p>
12	8005	3		<p><b>3. Disclosure.</b> Except as provided in subsection 4, the director may disclose confidential information in accordance with this subsection. Confidential information disclosed pursuant to this subsection remains the property of the bureau. Recipients of the confidential information may not disclose this information or use this information except as authorized by the director.</p>

## For Legislative Subcommittee Review August 23, 2012

Title	Section	Sub-§	General subject matter	Language
				<p>A. The director may disclose information designated as confidential under this section to a governmental entity that, in the opinion of the director, requires this information.</p> <p>B. The director shall provide names, addresses and <b>electronic mail</b> addresses upon request to a nonprofit corporation that provides educational services to forest landowners regarding sound forest management as long as the information disclosed is used to provide information about forest management.</p>
12	8611	1	Cooperative forestry management	<p><b>1. Forest management information.</b> The bureau shall provide a forest management information clearinghouse service with a statewide toll-free number. The information and referral service must include, but is not limited to:</p> <ul style="list-style-type: none"> <li>A. Reporting, notification and management requirements pursuant to this chapter;</li> <li>B. Timber and forest management options;</li> <li>C. Soil conservation practices;</li> <li>D. Insect and disease management practices;</li> <li>E. Recreation management options; and</li> <li>F. Wildlife management options.</li> </ul> <p>Addresses, telephone numbers and <b>electronic mail</b> addresses collected by the bureau for the purpose of contacting forest landowners owning less than 1,000 acres statewide to provide them with forest management information are confidential and may be disclosed only in accordance with section 8005. The bureau shall provide copies of forest management information sent to landowners to the joint standing committee of the Legislature having jurisdiction over agriculture, conservation and forestry matters.</p>

# For Legislative Subcommittee Review August 23, 2012

Title	Section	Sub-§	General subject matter	Language
12	8883-B	8	Forest landowner and wood processor reporting requirements	<b>8. Confidentiality.</b> The addresses, telephone numbers and <b>electronic mail</b> addresses of forest landowners owning less than 1,000 acres statewide contained in notifications filed under this section are confidential and may be disclosed only in accordance with section 8005.
20-A	6001	2	Student records	<b>2. Internet restrictions.</b> A public school may not publish on the Internet or provide for publication on the Internet any personal information about its students without first obtaining the written approval of those students' parents. For the purpose of this section, "personal information" means information that identifies a student, including, but not limited to, the student's full name, photograph, personal biography, <b>e-mail</b> address, home address, date of birth, social security number and parents' names.
21-A	1125	2-B	Maine Clean Election Act	<p><b>2-B. Seed money required for gubernatorial candidates; documentation.</b></p> <p>For seed money contributions that a candidate for Governor collects to satisfy the requirement in subsection 5, paragraph C-1, the candidate shall obtain the contributor's name, residence address, mailing address, telephone number if provided by the contributor and other information required for reporting under section 1017, subsection 5. For these contributions, the candidate shall submit to the commission during the qualifying period:</p> <p>A. A contribution acknowledgment form as determined by the commission, to be completed by each person that contributes seed money, that includes the name, residence address, mailing address, optional telephone number and signature of the person making the seed money contribution acknowledging that the contribution was made with the person's personal funds and will not be reimbursed by any source;</p> <p>B. A list of the seed money contributions in a format determined by the commission that includes the name and mailing address of the contributor;</p> <p>C. For seed money contributions received by check or money order,</p>

# For Legislative Subcommittee Review August 23, 2012

Title	Section	Sub-§	General subject matter	Language
				<p>photocopies of the check or money order; and</p> <p>D. For seed money contributions received by debit or credit card, a bank or merchant account statement that contains the cardholder's name and that otherwise meets the requirements specified by the commission in order to verify compliance with subsection 5, paragraph C-1.</p> <p>The commission may permit the submission of an online or electronic acknowledgment form as required by paragraph A for seed money contributions made via the Internet. The telephone numbers, e-mail addresses and bank account and credit card information of contributors that candidates have submitted to the commission pursuant to this subsection are confidential, except that the commission may disclose this information in a final audit or investigation report or determination if the information or record is materially relevant to a finding of fact or violation.</p>
21-A	1125	3	Maine Clean Election Act	<p><b>3. Qualifying contributions.</b> Participating candidates must obtain qualifying contributions during the qualifying period as follows:</p> <p>A. For a gubernatorial candidate, at least 3,250 verified registered voters of this State must support the candidacy by providing a qualifying contribution to that candidate;</p> <p>B. For a candidate for the State Senate, at least 175 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate; or</p> <p>C. For a candidate for the State House of Representatives, at least 60 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate.</p> <p>A payment, gift or anything of value may not be given in exchange for a qualifying contribution. A candidate may pay the fee for a money order that is a qualifying contribution in the amount of \$5 as long as the donor making the qualifying contribution pays the \$5 amount reflected on the money order. Any money order fees</p>



## For Legislative Subcommittee Review August 23, 2012

Title	Section	Sub-§	General subject matter	Language
				<p>paid by a participating candidate must be paid for with seed money and reported in accordance with commission rules. A money order must be signed by the contributor to be a valid qualifying contribution. The commission may establish by routine technical rule, adopted in accordance with Title 5, chapter 375, subchapter 2-A, a procedure for a qualifying contribution to be made by a credit or debit transaction and by electronic funds transfer over the <b>Internet</b>. Records containing information provided by individuals who have made qualifying contributions over the <b>Internet</b> are confidential, except for the name of the individual making the contribution, the date of the contribution, the individual's residential address and the name and office sought of the candidate in whose support the contribution was made.</p> <p>It is a violation of this chapter for a participating candidate or an agent of the participating candidate to misrepresent the purpose of soliciting qualifying contributions and obtaining the contributor's signed acknowledgement.</p>
32	2109			<p>§ 2109. Confidentiality of personal information of applicant or licensee</p> <p>For applications for licensure and for renewal of licensure submitted on or after July 1, 2004, an applicant or licensee shall provide the board with a current professional address and telephone number, which is the public contact address, and a personal residence address and telephone number. An applicant's or licensee's personal residence address and telephone number, and <b>e-mail</b> address if provided by the applicant, are confidential information and may not be disclosed except as permitted by this section or as required by law unless the personal residence address, telephone number and <b>e-mail</b> address have been provided as the public contact address. Personal health information submitted as part of any application is confidential information and may not be disclosed except as permitted or required by law.</p>
32	90-B		Emergency Medical Services licensing	<p><b>§ 90-B. Address of applicant</b></p> <p>Beginning on January 1, 2012, an applicant for a license or renewal of a</p>

## For Legislative Subcommittee Review August 23, 2012

Title	Section	Sub-§	General subject matter	Language
				<p>license under this chapter shall provide the board with:</p> <p><b>1. Public record address.</b> A contact address, telephone number and <b>e-mail</b> address that the applicant is willing to have treated as a public record, such as a business address, business telephone number and business <b>e-mail</b> address; and</p> <p><b>2. Personal address.</b> The applicant's personal residence address, personal telephone number and personal <b>e-mail</b> address.</p> <p>If the applicant is willing to have the applicant's personal residence address and telephone number and personal <b>e-mail</b> address treated as public records, the applicant shall indicate that in the application and is not required to submit a different address under subsection 1.</p>
32	91-R	1, ¶A	Emergency Medical Services licensing	<p>A. A personal residence address, personal telephone number or personal <b>e-mail</b> address submitted to the board as part of any application under this chapter is confidential and may not be disclosed except as permitted under this section or as otherwise required by law unless the applicant who submitted the information indicated pursuant to section 90-B that the applicant is willing to have the applicant's personal residence address, personal telephone number or personal <b>e-mail</b> address treated as a public record. Personal health information submitted to the board as part of any application under this chapter is confidential and may not be disclosed except as otherwise permitted under this section or otherwise required by law.</p>
35-A	10106	1	Efficiency Maine Trust	<p><b>1. Confidential records.</b> The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:</p> <p>A. A record obtained or developed by the trust that:</p> <p>(1) A person, including the trust, to whom the record belongs or pertains has requested be designated confidential;</p>

# For Legislative Subcommittee Review August 23, 2012

Title	Section	Sub-§	General subject matter	Language
				<p>(2) The board has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the trust's records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the trust, to any person to whom the record belongs or pertains;</p> <p>(3) Contains information about the energy usage profile of an identifiable customer of a transmission and distribution utility in the State or an identifiable customer of a distributor of heating fuel or other energy source; and</p> <p>(4) Contains the social security number, address, telephone number or <b>e-mail</b> address of a customer that has participated or may participate in a program of the trust; and</p> <p>B. A financial statement or tax return.</p>
36	581-G	3	Tree Growth Tax Law	<p><b>3. Confidentiality.</b> Addresses, telephone numbers and <b>electronic mail</b> addresses of forest landowners owning less than 1,000 acres statewide contained in reports filed under this section are confidential when in possession of the Department of Conservation, Bureau of Forestry and may be disclosed only in accordance with Title 12, section 8005.</p>

G:\STUDIES 2012\Right to Know Advisory Committee\le mail protections in Maine statutes.docx (8/9/2012 3:30:00 PM)



## Right to Know Advisory Committee

### Selected state statutes limiting release of e-mail addresses

Prepared July 8, 2010

State	Provision
Idaho	No agency may distribute or sell for use as a mailing list or a telephone number list any list of persons without first securing the permission of those on the list. §9-348(1)(a) No list of persons prepared by the agency may be used as a mailing list or a telephone number list except by the agency or another agency without first securing the permission of those on the list. §9-438(1)(b)
Virginia	The following records are not public records but may be disclosed by in the discretion of the custodian (except where such disclosure is prohibited by law): 10. Personal information, as defined in §2.2-3801, including electronic mail addresses, furnished to a public body for the purpose of receiving electronic mail from the public body, provided that the electronic mail recipient has requested that the public body not disclose such information. However, access shall not be denied to the person who is the subject of the record. §2.2-3705.1.10
Pennsylvania	Exemptions The following personal information: (A) A record containing all or part of a person's Social Security number; driver's license number; personal financial information; home, cellular or personal telephone numbers; personal e-mail addresses; employee number or other confidential personal identification number. . . . §708(a)(6)(i)(A)
New York	An Agency may deny access to records or portions thereof that, if disclosed, would constitute an unwarranted invasion of personal privacy. An unwarranted invasion of personal privacy includes, but is not limited to: . . . iii. Sale or release of lists of names or addresses if such lists would be used for commercial or fund-raising purposes. NY Pub.Off.Law §87(2)(b)(iii)
Indiana	State agencies by administrative rule and

## Right to Know Advisory Committee

State	Provision
	<p>other governmental units by ordinance may restrict the commercial use of information obtained through disk or tape of electronically-stored information. §5-14-3-3(e)</p> <p>A public agency is not required to create or provide copies of lists of names and addresses (including electronic mail account addresses) unless the public agency is required to publish such lists and disseminate them to the public under a statute. However, if a public agency has created a list of names and addresses (excluding electronic mail account addresses) it must permit a person to inspect and make memoranda abstracts from the list unless access to the list is prohibited by law. §5-14-3-3(f)</p>
Kansas	<p>The agency may require a person requesting the records or information therein to provide written certification that: . . . (2) the requester does not intend to, and will not:</p> <p>(A) Use any list of names or addresses contained in or derived from the records or information for the purpose of selling or offering for sale any property or service to any person listed or to any person who resides at any address listed; or (B) sell, give or otherwise make available to any person any list of names or addresses contained in or derived from the records or information for the purpose of allowing that person to sell or offer for sale any property or service to any person listed or to any person who resides at any address listed.</p>
Texas	<p>An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter. Tx Govt Code §552.137</p> <p>Exceptions, including disclosure if the member of the public affirmatively consents to its release.</p>

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Right to Know Advisory Committee  
Legislative Subcommittee  
DRAFT: Using technology to conduct public proceedings

**PART A**

**Sec. A-1. 1 MRSA § 403-A** is enacted to read:

**§403-A. Public proceedings through other means of communication**

This section governs public proceedings, including executive sessions, during which public or governmental business is discussed or transacted through telephonic, video, electronic or other means of communication.

**1. Requirements.** A body subject to this subchapter may conduct a public proceeding during which a member of the body participates in the discussion or transaction of public or governmental business through telephonic, video, electronic or other means of communication only if the following requirements are met.

A. The body has adopted a policy that authorizes a member of the body who is not physically present to participate in a public proceeding through telephonic, video, electronic or other means of communication in accordance with this section.

B. Notice of the public proceeding has been given in accordance with section 406.

C. A quorum of the body is assembled physically at the location identified in the notice required by section 406.

D. The physical attendance by each member who is participating from another location is not reasonably practical. The reason that each member's physical attendance is not reasonably practical must be stated in the record of the public proceeding.

E. Each member of the body participating in the public proceeding is able to simultaneously hear each other and speak to each other during the public proceeding. Members of the public attending the public proceeding in the location identified in the notice required by section 406 are able to hear all members participating from other locations.

F. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication identifies the persons present in the location from which the member is participating.

G. All votes taken during the public proceeding are taken by roll call vote.

H. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication has received prior to the public proceeding any documents or other materials that will be discussed at the public proceeding, with substantially the same content as those documents actually presented. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available.

I. The public proceeding is not a public hearing.

**2. Voting.** A member of a body who is not physically present and who is participating in the public proceeding through telephonic, video, electronic or other means of communication may not vote:

A. On any issue for which materials providing additional information that may influence the member's decision are presented at the public proceeding but have not been provided to the member by the time of the vote; or

B. On any issue concerning testimony or other evidence provided during the public proceeding if it is a judicial or quasi-judicial proceeding.

**3. Exception to quorum requirement.** A body may convene a public proceeding by telephonic, video, electronic or other means of communication without a quorum assembled physically at one location if:

A. An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742;

B. The public proceeding is necessary to take action to address the emergency; and

C. The body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency.

**4. Annual meeting.** If a body conducts one or more public proceedings pursuant to this section, it shall also hold at least one public proceeding annually during which members of the body in attendance are physically assembled at one location and where no members of the body participate by telephonic, video, electronic or other means of communication from a different location.



Seek input of agencies before making legislative changes to statutory procedures below.

## PART B

### Finance Authority of Maine

**Sec. B-1.** 10 MRSA §971 is amended to read:

#### **§971. Actions of the members**

Seven members of the authority constitute a quorum of the members. The affirmative vote of the greater of 5 members, present and voting, or a majority of those members present and voting is necessary for any action taken by the members. No vacancy in the membership of the authority may impair the right of the quorum to exercise all powers and perform all duties of the members.

Notwithstanding any other provision of law, in a situation determined by the chief executive officer to be an emergency requiring action of the members on not more than 3 days' oral notice, an emergency meeting of the members may be conducted by telephone in accordance with Title 1, section 403-A and the following.

- 1. Placement of call.** A conference call to the members must be placed by ordinary commercial means at an appointed time.
- 2. Record of call.** The authority shall arrange for recordation of the conference call when appropriate and prepare minutes of the emergency meeting.
- 3. Notice of emergency meeting.** Public notice of the emergency meeting must be given in accordance with Title 1, section 406 and that public notice must include the time of the meeting and the location of a telephone with a speakerphone attachment that enables all persons participating in the telephone meeting to be heard and understood and that is available for members of the public to hear the business conducted at the telephone meeting.

### Ethics Commission (any changes?)

**Sec. B-2.** 21-A MRSA §1002 is amended to read:

#### **§1002. Meetings of commission**

- 1. Meeting schedule.** The commission shall meet in Augusta for the purposes of this chapter at least once per month in any year in which primary and general elections are held and every 2 weeks in the 60 days preceding an election. In the 28 days preceding an

election, the commission shall meet in Augusta within one calendar day of the filing of any complaint or question with the commission. Agenda items in the 28 days preceding an election must be decided within 24 hours of the filing unless all parties involved agree otherwise.

**2. Telephone meetings.** The commission may hold meetings over the telephone if necessary, as long as the commission provides notice to all affected parties in accordance with the rules of the commission and the commission's office remains open for attendance by complainants, witnesses, the press and other members of the public. Notwithstanding Title 1, chapter 13, telephone meetings of the commission are permitted:

A. During the 28 days prior to an election when the commission is required to meet within 24 hours of the filing of any complaint or question with the commission; or

B. To address procedural or logistical issues before a monthly meeting, such as the scheduling of meetings, deadlines for parties' submission of written materials, setting of meeting agenda, requests to postpone or reschedule agenda items, issuing subpoenas for documents or witnesses and recusal of commission members.

**3. Other meetings.** The commission shall meet at other times on the call of the Secretary of State, the President of the Senate, the Speaker of the House or the chair or a majority of the members of the commission, as long as all members are notified of the time, place and purpose of the meeting at least 24 hours in advance.

**4. Office hours before election.** The commission office must be open with adequate staff resources available to respond to inquiries and receive complaints from 8 a.m. until at least 5:30 p.m. on the Saturday, Sunday and Monday immediately preceding an election and from 8 a.m. until at least 8 p.m. on election day.

#### Emergency Medical Services Board

**Sec. B-3.** 32 MRSA §88, sub-§1, ¶D is amended to read:

#### **§88. Emergency Medical Services' Board**

The Emergency Medical Services' Board, as established by Title 5, section 12004-A, subsection 15, is responsible for the emergency medical services program.

**1. Composition; rules; meetings.** The board's composition, conduct and compensation are as follows.

A. The board has one member representing each region and 11 persons in addition. Of the additional persons, one is an emergency physician, one a representative of emergency medical dispatch providers, 2 representatives of the public, one a representative of for-profit ambulance services, one an emergency professional nurse, one a representative of nontransporting emergency medical services, one a representative of hospitals, one a representative of a statewide association of fire chiefs, one a municipal emergency medical services provider and one a representative of not-for-profit ambulance services. The members that represent for-profit ambulance services, nontransporting emergency medical services and not-for-profit ambulance services must be licensed emergency medical services persons. One of the nonpublic members must be a volunteer emergency medical services provider. Appointments are for 3-year terms. Members are appointed by the Governor. The state medical director is an ex officio nonvoting member of the board.

B. The board shall elect its own chair to serve for a 2-year term. The board may adopt internal rules that may include, but are not limited to, termination of board membership as a consequence of irregular attendance. If a board member does not serve a full term of appointment, the Governor shall appoint a successor to fill the vacancy for the remainder of the term. Any board member may be removed by the Governor for cause. The board may have a common seal. The board may establish subcommittees as it determines appropriate.

C. The board shall meet at least quarterly, and at the call of its chair or at the request of 7 members. When the board meets, members are entitled to compensation according to the provisions of Title 5, chapter 379.

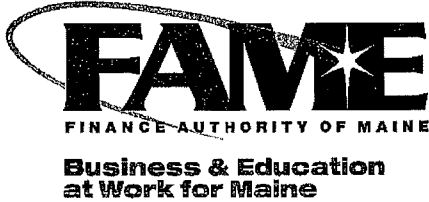
D. A majority of the members appointed and currently serving constitutes a quorum for all purposes and no decision of the board may be made without a quorum present. A majority vote of those present and voting is required for board action, except that for purposes of either granting a waiver of any of its rules or deciding to pursue the suspension or revocation of a license, the board may take action only if the proposed waiver, suspension or revocation receives a favorable vote from at least 2/3 of the members present and voting and from no less than a majority of the appointed and currently serving members. The board may use video conferencing and other technologies in compliance with Title 1, chapter 13, subchapter 1, to conduct its business but is not exempt from Title 1, chapter 13, subchapter 1. Members of the board, its subcommittees or its staff may participate in a meeting of the board, subcommittees or staff via video conferencing, conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection constitutes presence in person at such meeting.

Workers' Compensation Board

**Sec. B-4. 39-A MRSA §151, sub-§5** is amended to read:

**5. Voting requirements; meetings.** The board may take action only by majority vote of its membership. The board may hold sessions at its central office or at any other place within the State and shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology in compliance with Title 1, chapter 13, subchapter 1. Regular meetings may be called by the executive director or by any 4 members of the board, and all members must be given at least 7 days' notice of the time, place and agenda of the meeting. A quorum of the board is 4 members, but a smaller number may adjourn until a quorum is present. Emergency meetings may be called by the executive director when it is necessary to take action before a regular meeting can be scheduled. The executive director shall make all reasonable efforts to notify all members as promptly as possible of the time and place of any emergency meeting and the specific purpose or purposes for which the meeting is called. For an emergency meeting, the 4 members constituting a quorum must include at least one board member representing management and at least one board member representing labor.

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August 20, 2012

Judy Meyer, Chair  
Legislative Subcommittee  
Right to Know Advisory Committee  
c/o Peggy Reinsch  
Office of Policy and Legal Analysis  
13 State House Station  
Augusta, ME 04333

Dear Chair Meyer:

Thank you for the opportunity to review and comment on the proposed draft legislation concerning use of technology to conduct public proceedings. The Finance Authority of Maine (FAME) appreciates the opportunity to respond to the proposed changes to our existing statute, which is set forth at 10 M.R.S.A. § 971.

As we have noted in previous correspondence to the Committee, FAME's statutory language on this matter has been in place for some time now, and use of technology to conduct FAME-related public proceedings has been used rarely, but well. We have some concerns regarding the proposed changes and wish to offer some suggestions for improvement.

First, as a general matter, we prefer to retain our existing statutory language, unaltered. If one examines the proposed changes to FAME's statute, our emergency meetings would now have to meet all the requirements of proposed 1 M.R.S.A. § 403-A, *as well as* FAME's additional existing statutory requirements. We value our current ability to conduct emergency proceedings electronically in limited circumstances. The draft language appears to allow full telephonic meetings only in very limited circumstances (i.e. when the Department of Health and Human Services or the Governor so declare). This is too narrow for FAME's customers' needs. As you can imagine, FAME "emergencies" are different from health risks or weather disasters; they typically are economic in nature, such as when a company requires immediate financial assistance to continue operating and immediate board action is necessary to save jobs. Other examples include having to make a credit decision on less than three days' notice based on the exigencies of a situation, and may include having to conduct a meeting that was regularly scheduled, but is now impossible for members to attend because of poor weather, so that the businesses awaiting financing may receive a timely decision.

Second, if changes to the FAME Act must proceed, we have specific concerns and suggestions for improvement of the proposed language:

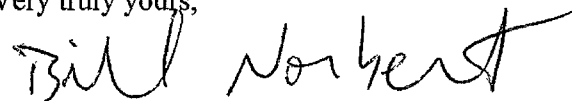
- In proposed 1 M.R.S.A. § 403-A(1)(C), a quorum of the body would now be required to be assembled physically at the meeting location, and a remote participant would not count toward a quorum. Although perhaps ideal, this new requirement is problematic for FAME in cases of emergency when telephonic participation of members is necessary and quorums are *only* achievable by counting telephonic participants. We have found this option useful when dealing with business assistance emergencies in the past, and have only used this method approximately three times in the past seven years. While the draft legislation creates exceptions for certain emergencies, as discussed below, we urge the committee to consider removing this requirement for a broader range of “emergencies,” at least as to FAME.
- **Subsection (1)(D)** would require that, for use of remote board member participation, that “[t]he physical attendance by each member who is participating from another location is not reasonably practical. The reason that each member’s physical attendance is not reasonably practical must be stated in the record of the public proceeding.” How do we determine what is “reasonably practical”? If we get it wrong, would the board action subsequently be invalidated? If we are conducting a public hearing on a proposed rule or appeal during a board meeting, should the member participating remotely hang up, not participate, and phone back later?
- **Subsection (1)(E)** requires that remote participants be able to “simultaneously” hear each other and speak. We are not certain what this means from a technology standpoint. Speaker phones frequently require speaking and listening sequentially rather than simultaneously, but allow, in our view, adequate means of communication back and forth, and should be allowed.
- **Subsections (1)(H) and (2)(A)** create requirements that members not physically present: (1) receive in advance all documents to be discussed at the public meeting; and (2) disallows remote member voting if materials that may influence their decision are presented at the public proceeding but not to the remote member. Although FAME always attempts to furnish all materials in advance to board members, sometimes last-minute borrower request materials are provided at the actual meeting. Often, such materials are not, absent the ability to immediately fax or e-mail it to the absent member, easily able to be transmitted to members in advance. A business seeking board approval may bring an object, large document or display to the meeting that could not practicably be provided instantaneously to a member participating electronically. At a minimum, an exception should be made in cases where substantial information has been presented and it is not practicable to furnish all late-arriving materials.

- **Subsection (1)(I)** would forbid remote member participation in the case of a public hearing. FAME requests that an exception be made for the common case of *pro forma* public hearings in the rulemaking process. The Administrative Procedures Act requires that one-third of board members be present. FAME prefers to have greater member participation and not inconvenience our members with additional meetings, so we typically conduct our rulemaking hearings on monthly, regular board meeting days. To do otherwise would require a minimum of five (of our fifteen) board members (who are busy and live in all parts of the state) to gather physically more frequently for just this purpose. This is impractical and logistically challenging. Besides, written comments for public hearings are already allowed under the law.
- **Subsection (3)(A)** seemingly limits emergency meetings to cases largely inapplicable to FAME (a Governor-declared emergency or health emergency). Again, what about FAME-related emergencies like potential business closings? The exceptions here should be broadened to allow for our current statute and other statutory cites, or these requirements should be deleted. We ask either to be left out of this legislative change or instead have an additional definition of "emergency" added for our needs.

In sum, FAME prefers to keep its current statute on the books, unamended. We are happy and able, however, to comply with the bulk of the proposed changes to Title 1, if necessary, but urge you to consider the needs and practicalities of our members and our mission. In rare but important cases, FAME members need to meet at a moment's notice to save a business or respond to a financial emergency. Requiring our volunteer board members who live throughout the state to physically assemble to conduct important business with little notice could result in businesses not receiving financing assistance in a timely manner with potentially devastating results for the business.

Please let me know if you or the Committee have any questions or require further information. We are glad to assist in any way possible.

Very truly yours,



William S. Norbert  
Governmental Affairs and  
Communications Manager

Cc: Colleen McCarthy Reid, OPLA  
Curtis Bentley, OPLA







August 20, 2012

Judy Meyer, Chair  
Legislative Subcommittee  
Right to Know Advisory Committee  
c/o Peggy Reinsch  
Office of Policy and Legal Analysis  
13 State House Station  
Augusta, ME 04333

Dear Chair Meyer:

Thank you for the opportunity to review and comment on the proposed draft legislation concerning use of technology to conduct public proceedings. The Small Enterprise Growth Board (SEGB) appreciates the opportunity to respond to the proposed language.

The SEGB's proceedings are governed by Statute (10 M.R.S.A. §§381 – 392) and by Rule. The Board is comprised of volunteers, all uncompensated. Although nothing in our Statute references remote participation by Board Members, our Rule does. *See Section 6(D) of attached Ch. 701: Small Enterprise Growth Program.* The process, although rarely used, works well. In essence, the existing process allows Board Members to participate in meetings telephonically. They are not entitled to vote or help determine a quorum, however, *except* in cases when the Board Chair determines the allowance of votes by those members, and the counting of their "presence" for a quorum, to be *necessary to avoid undue hardship* to an applicant for an investment. The SEGB has used this provision judiciously and rarely, and to very good effect. It has been used in cases where a company was facing some sort of financing crisis, and SEGB action was required between meetings to approve a certain set of terms for investment; for example, so that the staff could execute and not hinder the company. In 2009, SEGB held two regular board meetings via telephone, and three "emergency" meetings telephonically to address pressing issues. Since January 1, 2010, however, SEGB has held only one meeting telephonically, and that was a regular, non-emergency meeting.

We would like to share some of our concerns and suggestions for improvement of the proposed language:

SMALL ENTERPRISE GROWTH FUND

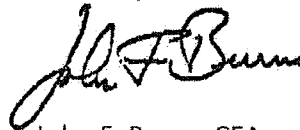
- In proposed **1 M.R.S.A. § 403-A(1)(C)**, a quorum of the SEGB would be required to be assembled physically at the meeting location, and a remote participant would not count toward a quorum. As noted above, our current Rule requires this *except* in cases when the Board Chair determines the allowance of votes by those members, and the counting of their “presence” for a quorum, to be *necessary to avoid undue hardship* to an applicant for an investment. Although perhaps ideal, this new requirement would be problematic for SEGB in cases of emergency when telephonic participation of members is necessary and quorums are *only* achievable by counting telephonic participants. We have found this option useful in several instances, as provided in the above example, and have only used this method approximately five times in the past three years. While the draft legislation creates exceptions for certain emergencies, as discussed below, we urge the committee to consider removing this requirement for a broader range of “emergencies.”
- **Subsection (D)** would require that, for use of remote board member participation, that “[t]he physical attendance by each member who is participating from another location is not reasonably practical. The reason that each member’s physical attendance is not reasonably practical must be stated in the record of the public proceeding.” We would appreciate further guidance as to what constitutes “reasonably practical”? Would the board action subsequently be invalidated if we get it wrong?
- **Subsection 1(E)** requires that remote participants be able to “simultaneously” hear each other and speak. We are not certain what this means from a technology standpoint. Traditional speaker phones frequently require speaking and listening sequentially rather than simultaneously, but allow, in our view, adequate means of communication back and forth, and should be allowed.
- **Subsections (1)(H) and (2)(A)** create requirements that members not physically present: (1) receive in advance all documents to be discussed at the public meeting; and (2) disallows remote member voting if materials that may influence their decision are presented at the public proceeding but not to the remote member. Although SEGB strives to furnish all materials in advance to board members, sometimes last-minute materials are provided at the actual meeting. Often, such materials are not, absent the ability to immediately fax or e-mail it to the absent member, easily able to be transmitted to members in advance. A business seeking board approval may bring an object, large document or display to the meeting that could not practicably be provided instantaneously to a member participating electronically. At a minimum, an exception should be made in cases where substantial information has been presented and it is not practicable to furnish all late-arriving materials.

- **Subsection (3)(A)** limits emergency meetings to cases largely inapplicable to SEGB (a Governor-declared emergency or health emergency). The exceptions here should be broadened to allow for our current practice or these requirements should be deleted. We ask either to be left out of this legislative change or instead have an additional definition of "emergency" added for our needs.

In sum, the SEGB respectfully requests that the Committee consider the above concerns as you move forward on potential legislation for the 126<sup>th</sup> Legislature. In rare but important instances, SEGB members need to meet at a moment's notice to approve a certain transaction, or approve a waiver so that the subject company is freed to do other things, for example. Requiring our members who live throughout the state to physically assemble to conduct important business with little notice could result in businesses not receiving financing assistance in a timely manner with potentially devastating results for the business.

Please let me know if you or the Committee have any questions or require further information. FAME's legislative liaison, Bill Norbert, will be monitoring the issue and appearing at most Committee meetings on our behalf. We are glad to assist in any way possible.

Sincerely,

A handwritten signature in black ink, appearing to read "John F. Burns".

John F. Burns, CFA  
Fund Manager

cc: Colleen McCarthy Reid, OPLA  
Curtis Bentley, OPLA

Summary: This Rule establishes the procedures and standards applicable to the Small Enterprise Growth Program, a program that provides for the administration of one or more funds that invest in eligible small Maine-based businesses demonstrating potential for high growth and significant public benefit.

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## 1. Definitions

A. **Reference to Act Definitions.** Certain terms used in this rule, which are defined in 10 M.R.S.A. §381 and following (the "Act"), shall have the meanings set forth in the Act, unless clearly specified otherwise or unless the context clearly indicates otherwise.

### B. Defined Terms

1. "Administrative contract" means a contract between the Board and a service provider to administer specified aspects of the program.
2. "Applicant" means an individual or entity which has submitted a complete application to the Board.
3. "Authority" means the Finance Authority of Maine, or as the context requires, the Chief Executive Officer and employees of the Authority.
4. "Board" means the Small Enterprise Growth Board.
5. *[Repealed effective July 25, 2002]*
6. *[Repealed effective July 25, 2002]*
7. "Fund manager" means an individual or entity that has entered into an agreement with the Board to administer the program and the Program Funds, including but not limited to, the review and analysis of applications, meeting with applicants, providing analysis of the status of the Program Funds, publicizing the Program Funds, executing documents and taking other actions on behalf of the Board.
8. "Initial investment" means a disbursement from the SEGF of up to \$500,000, which may be made in a single payment or in a series of payments to the qualifying small business pursuant to one or more disbursement agreements.
9. "Investment agreement" means an agreement between the recipient and the Board setting out the terms on which the Board will invest in the recipient and on which the recipient will repay the Program Funds or otherwise provide a return to the Board on its investment.

10. "Program" means the Small Enterprise Growth Program, which shall encompass administration of the Small Enterprise Growth Fund and any and all Side Funds.
11. "Program Funds" means the Small Enterprise Growth Fund and any and all Side Funds.
12. "Public benefit" means that the disbursement will advance and assist the people of the State of Maine.
13. "Qualifying small business" means
  - (A) For the purpose of an initial investment by the Board, a business which employs the full time equivalent of 50 or fewer individuals at the time of application or has gross sales not exceeding \$5,000,000 within the most recent 12 months for which financial statements meeting the Board's requirements are available; or
  - (B) For the purpose of a subsequent investment by the Board, a business that has previously received an investment from the Board and that, in the judgment of the Board, evidences continued potential for high growth.
14. "Recipient" means a qualified small business in which the Board makes an investment from the Funds and includes a prospective recipient where the context requires, and also includes any related entity having 50% or greater common ownership or beneficial interest with the recipient or any individual or entity having a 50% or greater ownership or beneficial interest in the recipient.
15. "SEGF" means the Small Enterprise Growth Fund.
16. "Side Fund(s)" means a fund or funds, created and administered by the Board, from sources other than monies appropriated to the SEGF (and earnings thereon) which co-invests alongside the SEGF, or makes independent investments in select qualifying small businesses.
17. "Side Fund Investments" means investments in qualifying businesses by the Board from one or more Side Funds.
18. "Subsequent investment" means, an investment by the SEGF which, together with any initial investment, is in an amount which does not exceed ten percent (10%) of the capitalization of the SEGF from all appropriations received for application to the SEGF, plus any funds received from repayment, interest, royalties, equities or other interests in business enterprises, products or services to the extent the repayment, interest, royalties or equities or other interests are in excess of the amount initially invested in the recipient, as determined on the date of approval of the subsequent investment, which may be made in a single disbursement or a series of disbursements to the qualifying small business.

**2. Administration**

- A. The Board has the power to approve investments to qualifying small businesses from the Program Funds. The Board may not delegate the final authority to approve investments, but once having authorized a potential investment from the Program Funds within designated parameters approved by it, the Board may delegate to a subcommittee of the Board the authority to negotiate and agree to terms of the investment within those designated parameters.
- B. The Board may delegate to one or more subcommittees the authority to review applications. The subcommittee may be given the authority to deny applications for investments. The Board may determine in advance that such a denial will be final agency action, not subject to appeal to the full Board.
- C. The Board may create such other subcommittees as it may deem necessary for the administration of the Board's business.
- D. The Board may enter into administrative contracts with one or more individuals or entities to perform the administrative functions necessary to the efficient conduct of the program and the administration of the Program Funds. Without limitation, services contracted for may include development of rules, procedures, documentation, financial reporting, publicity, analysis and recommendations with respect to applications received. The contracts may provide compensation for services rendered and reasonable expenses.

**3. SEGF Administration**

- A. The Authority shall maintain and invest the cash balances of the SEGF at the direction of the Board and shall report regularly to the Board regarding the balance of the SEGF.
- B. Appropriations, interest on investments, interest on investments to recipients, principal repayments, grants, endowments and gifts will be added to the SEGF. The SEGF will be used to make investments to recipients and to pay costs and expenses associated with maintaining, servicing and administering the SEGF and the program.

**3A. Side Fund Administration**

- A. The Board may enter into agreements or contracts with third parties to create and fund Side Funds. Ownership interests in Side Funds may be allocated or issued by the Board in accordance with such agreements, and monies in the Side Funds, whether principal, interest, investment income, investment repayment, or profit, may be distributed by the Board to third parties in accordance with such agreements. Such agreements may also provide that the Board be entitled to receive and retain profits or other returns on investments by the Side Fund. Any amounts definitively earned by the Board in a Side Fund shall be transferred to the SEGF at such time as the Board may direct, but in no event later than the closing of such Side Fund.

- B. Monies for the creation or funding of Side Funds may come from any lawful source, including public entities and private individuals or entities, and may be structured as revolving or non-revolving funds, and all or a portion of such monies may be returned to the contributor or investor in accordance with the terms of the agreements governing the creation of such Side Funds.
- C. Interest on investments of Side Fund monies, interest on investments by Side Funds into Recipients, principal repayments, grants, endowments and gifts will be added to such Side Fund as directed by the Board. Such Side Funds may be used to make investments to Recipients and to pay costs and expenses associated with maintaining, servicing and administering the Side Funds and the program.
- D. The Board may charge and accept management fees, or carried interest for management, from the Side Funds, or from third parties, for management and administration of monies in the Side Funds, provided that in no event shall any such management fees be charged to or paid from monies appropriated by the state to the SEGF.
- E. The Authority shall maintain and invest any and all Side Funds for which it is given direction to do so by the Board and shall report regularly to the Board regarding the balance of such Side Funds.

#### 4. Eligibility

To be eligible to receive an investment from the Funds an applicant must meet each of the criteria in A-C below:

- A. Must be engaged in or involve at least one of the following:
  - 1. Marine Sciences
  - 2. Biotechnology
  - 3. Manufacturing
  - 4. Export of goods or services to locations outside the State or activities that result in significant amounts of capital being imported into the State
  - 5. Software development
  - 6. Provision or development of environmental services or technologies
  - 7. Provision or development of financial or insurance products or services
  - 8. Production of value-added goods from natural resources
  - 9. Other enterprises that the Board determines will further the purposes and intent of the program, including, but not limited to, retail sales, tourism and agricultural production.

- B. The qualifying small business must demonstrate that it has the potential for high growth and that it will provide public benefit.
- C. The qualifying small business must provide evidence of its need for financial assistance from the fund to realize its projected growth and achievement of public benefit.

## **5. Application Procedure and Contents**

- A. Prior to being considered for an investment from the Program Funds, a company seeking investment must supply, at a minimum, the following information:
  - 1. A description of the applicant, which identifies the business of the applicant, including the legal form of the business entity.
  - 2. A statement of how the investment will be used.
  - 3. The background and experience of all individuals essential to the applicant. (Resumes may be attached to fulfill this requirement.)
  - 4. A description of the goal and/or opportunity, which inspired the applicant.
  - 5. A description of the current status of the applicant, including an assessment of the stage it is at in its effort to achieve its goal or opportunity.
  - 6. A description of all previous investments received by the applicant.
  - 7. An assessment of the current value of the applicant.
  - 8. An estimate of the amount of capital needed to achieve the goal or opportunity of the applicant.
  - 9. A description of the competition of the applicant.
  - 10. A statement of how the applicant will obtain the required matching funds.
  - 11. A description of the potential of the applicant for high growth and public benefit.
  - 12. The profit and loss statement, balance sheet and statement of cash flows for the most recent two years or such shorter time as the applicant has conducted the business.
  - 13. The applicant's projected financial statements for the next three years, including a profit and loss statement, balance sheet, statement of cash flows and any other projections the Board requests.



14. A disclosure of any actions, suits, proceedings or investigations pending against or, to the knowledge of the applicant or the individuals managing the applicant, threatened against or affecting the applicant or the individuals managing the applicant.
- B. The applicant shall provide such additional information related to the business or the individuals managing the business as the Board may reasonably request.

## **6. Board Action**

- A. Five (5) Board members shall constitute a quorum of the Board. If five (5) Board members are present at the beginning of any meeting, then a quorum exists for the transaction of the business. If any Board member(s) leaves a meeting at which a quorum was originally present, so that less than five (5) Board members remain, a quorum shall be deemed to continue to exist. Notwithstanding the foregoing, a majority of those present and voting is necessary for approval of an application or other action, and the affirmative vote of at least four (4) Board members is required to approve an investment.
- B. No Board member may participate in a vote on an application where that member has a direct or indirect pecuniary interest in the outcome of the vote. Every interest of a Board member in any matter before the Board must be disclosed to the Board.
- C. In cases where the Board approves an investment, the Board or an authorized subcommittee may issue a term sheet outlining the terms and conditions of the investment. In cases where the application for an investment from the Program Funds are denied, the Board shall issue (or cause to be issued) a letter of denial, which includes an explanation for the denial.
- D. The Board shall have a physical location for each meeting at which members of the public may attend. Board members may participate in meetings by teleconference. Board members participating in the meeting by teleconference shall not be entitled to vote nor be deemed present for the purposes of determining a quorum, except in cases when the Chair of the Board determines the allowance of votes by those members participating by teleconference, and the counting of such members towards a quorum is necessary to avoid undue hardship to an applicant for an investment.

## **7. Delegation of Application Review to Subcommittee**

- A. Affirmative action by the Board is necessary to delegate to a subcommittee authority to review applications or authority to negotiate and agree to terms of an approved investment within designated parameters set by the Board.
- B. Each subcommittee shall be composed of 1 or more members, except that a subcommittee with delegated authority to negotiate or approve a portfolio company investment shall have at least 3 members.

- C. Each decision of a subcommittee must be approved by a majority of all members of the subcommittee.
- D. Subcommittees may meet and take action by means of teleconference.

**8. Terms and Conditions of Investments**

- A. Initial investments, subsequent investments, and Side Fund Investments shall be made in an amount which is reasonable as shown by materials submitted by the qualified small business.
- B. Investments from the Program Funds may be in a form determined by the Board in recognition of the degree of risk of the proposal. The investment agreement may require royalties or additional payments based on sales, net cash flow or other financial measures, or rights to equity in the enterprise in the form of debentures, warrants, stock ownership or similar rights.
- C. With respect to investments from the SEGF, the qualifying small business must provide the Board satisfactory evidence that it has obtained other cash funds in an amount at least equal to the investment. The matching cash may be in the form of debt or equity, but must be at risk in the qualifying small business for a term at least equal to the Board's investment, must be invested no later than the date of the Board's investment and may be invested prior to the Board's investment as approved by the Board. If the Board approves an investment made prior to the Board's investment as the matching investment, it must remain at risk in the recipient for at least as long as the Board's investment. Side Fund investments may, in the discretion of the Board, count as matching investments to investments from the SEGF.
- D. The Board may make incremental investments to the recipient based on specific events or conditions established at the time of approval.
- E. The recipient will be required to report to the Board at least quarterly on each of the following performance measures:
  - 1. Financial performance;
  - 2. Job creation;
  - 3. Technological progress;
  - 4. Market progress; and
  - 5. Any other measures the Board requires.
- F. The recipient may not use the investment to make distributions to or for the benefit of an owner of the recipient or a related entity.

- G. No member, employee or agent of the Board may disclose to any person the contents of any business or marketing plan for any application, any financial statements or reports pertaining to any recipient, or any other records which may be confidential pursuant to 1 M.R.S.A. §401 and following and 10 M.R.S.A. §391 or any successor or similar provisions.

**9. Fees and Other Charges**

- A. *[Repealed Effective October 1, 1999]*

The Board may require the recipient to be responsible for costs and expenses of closing, administering and collecting on the investment.

**10. Advisory Rulings**

The Board is authorized to issue nonbonding advisory rulings as to the applicability of the program or the Board's rules to the applicant. Requests for advisory rulings must be in writing and must specifically identify the section or provision of the statute or rule on which the ruling is sought. The Board may decline to issue any ruling if the request is not sufficiently specific, is not accompanied by adequate information, does not adequately identify the applicant or the purpose for which the ruling is sought, or if the Board determines that issuance of a ruling would not assist the applicant or would be contrary to the purposes of the program. All rulings shall be in writing. Rulings shall not be binding upon the Board. The Board may charge an applicant for a ruling the Board's actual, out-of-pocket costs and expenses, if any, in preparing any ruling.

**11. Hearing Procedures**

In any case, where applicable law or rule requires the Board to conduct a hearing, the hearing shall be conducted substantially as follows:

- A. The proponent shall make a statement in support of its position, addressing the findings required to be made by the Board in considering the application. The Board may ask questions of the applicant. The Board may allow others to ask questions of the proponent through the chair.
- B. Opponents shall be given an opportunity to state the basis of their opposition to the matter before the Board.
- C. The proponent shall be given an opportunity to respond to the opposition presented.
- D. The Board may require additional information, and may continue the hearing to a later date or specify a period within which it will accept further evidence, but shall not be obligated to do so.

The Board may, in its discretion, retain a court reporter or otherwise make a record of the hearing, and the proponent shall be responsible for any costs and expenses of making the record.



## BASIS STATEMENT

### Amendment 6

The rule amendment adds provisions to allow the Board to establish and maintain so-called "Side Funds" from sources other than State appropriations, which would be a more flexible investment vehicle than the Small Enterprise Growth Fund. The ability to establish and manage these side funds was added by PL 2010, Chapter 475.

A public hearing was not held and no other comments were received.

#### Economic Impact Analysis Statement/Fiscal Impact Note

- A. There should be no costs associated with this Rule amendment.
- B. The Rule amendment will enable the Board to obtain the most timely financial information available regarding an applicant.
- C. The Rule amendment should not affect competition and the employment market.
- D. The above statements were made based on the experience of the members of the Board in administering this program.

The proposed Rule amendment will not impose any costs on municipalities or counties.

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STATUTORY AUTHORITY: 10 M.R.S.A. §385

EFFECTIVE DATE:

June 14, 1997

AMENDED:

November 2, 1998 (Amendment 1) - Section VI

October 1, 1999 (Amendment 2) - changes to Sections 1.B.5., 1.B.6, 1.B.10, 3.B, 4.C., 5.A. 1-14, including the addition of a new Section 5.A.13, and the renaming of the prior 5.A.13 to 5.A.14, 5.B., 8.A., 8.B., 8.C., 8.D., 8.E., 8.F., 8.G., 9.A. and 9.B.

NON-SUBSTANTIVE CHANGE:

January 17, 2002 - moved from umbrella-unit number 94-457 to 95-592

AMENDED:

July 25, 2002 (Amendment 3) - the addition of Sections 1.B.7A., 1B.7B., 1.B.7C., 1.B.11., 1.B.12., changes to Sections 1.B.8., 1.B.10., 2.A., 2.B., 2.C., 3.B., 4., 5.A., 5.A.2., 5.A.12., 5.A.13, 6.A., 6.C., 8., 8.A., 8.B., 8.D., 8.E., 8.F., 9., and the deletion of Sections 1.B.5, 1.B.6.

December 10, 2003 (Amendment 4), filing 2003-463 - Section 1.B.10.(A).

NON-SUBSTANTIVE CORRECTION:

February 18, 2004 - capitalization of "Board" on page 2

November 15, 2008 (Amendment 5)

AMENDED:

September 7, 2010 (Amendment 6). Added Section 3A and other conforming changes.



PAUL R. LePAGE  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF PUBLIC SAFETY  
MAINE EMERGENCY MEDICAL SERVICES  
152 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333



JOHN E. MORRIS  
COMMISSIONER

JAY BRADSHAW  
DIRECTOR

August 21, 2012

Maine State Legislature  
Office of Policy and Legal Analysis  
Right to Know Advisory Committee  
13 State House Station  
Augusta, ME 04333

Re: Participating in meetings using technology

I am writing on behalf of the Emergency Medical Services' Board to express our concern regarding proposed changes that will affect the EMS Board's use of video/audio conferencing technology.

The EMS Board consists of 17 members who represent various aspects of emergency medical services, and come from all regions of the state. Members of the Board are compensated \$20/day, plus mileage to attend bi-monthly meetings, which are held in Augusta. The length of the meeting varies depending on the business at hand and can range from less than an hour to all day.

For over a decade, Maine EMS has utilized both audio and video conferencing to enable members to participate in Board meetings. This has enabled members whose work schedule or weather conditions made travel difficult, and for the meetings where there was a brief agenda. It has been particularly helpful for the members from distant rural areas who otherwise would not be able to attend.

Many of the proposed changes to 1 MRS § 403-A are consistent with how EMS currently utilizes technology. However, several could have a significant impact, to wit:

§ 403-A. (1)(C) will require that a quorum be assembled physically at the location identified in the public notice. EMS has always had a physical location where the public is able to attend, and there are often several members of the Board in attendance at that location. However, there have also been times when the agenda is brief and a majority of members participate in the meeting via technology. As such, a requirement that a minimum of 9 members be present at the physical location will have a negative effect on the ability of the Board to conduct business in a cost effective and timely manner.

§ 403-A. (1)(D) adds a restriction that the physical absence be "reasonably practical." It is unclear what this means and as such, we have concerns about how it may be interpreted.

PHONE: (207) 626-3860

TTY: (207) 287-3659

FAX: (207) 287-6251

With offices located at the Central Maine Commerce Center, 45 Commerce Drive, Suite 1, Augusta, ME 04330

C-4

§ 403-A (1)(I) restricts the ability to conduct public hearings via technology. The EMS Board is responsible for adopting rules in accordance with the ADA and has the additional statutory requirement to conduct a hearing in each region as determined necessary (32 MRS § 88 (2)(B)).

Since the late 1990s, EMS has utilized technology as a means to expand the ability of public participation during the rule-making process. Without the ability to utilize technology for public hearings, members of the public in rural areas will either be required to travel considerable distance to participate in person or be limited to providing written comments.

In § 403-A (2)(B) it is not clear to us what is meant by “quasi-judicial proceeding”. The Board of EMS does not utilize technology for member participation in Investigations Committee meetings, nor for Adjudicatory Fair Hearings. However, the routine business conducted by the Board may include rules clarifications, an appeal of a staff decision, or a waiver request. To the extent that these could be considered “quasi-judicial”, the proposed restriction will significantly delay the Board’s ability to act upon a license matters in a timely manner

Lastly, § 403-A (3) provides an exemption to the physical quorum exception only in emergency situations as defined in this section. As previously stated, the physical quorum requirement provides a significant obstacle to the Board’s ability to conduct its business.

We appreciate the opportunity to provide input regarding the proposed changes and encourage the Committee to not make changes that will provide additional obstacles to the Board as it conducts business, and to public participation in the rule making process.

I am planning to attend Thursday’s meeting and will be happy to provide additional information that will help the Committee.

Sincerely,

A handwritten signature in cursive script, reading "Jay Bradshaw", followed by a horizontal flourish.

Jay Bradshaw  
Director





PAUL R. LePAGE  
GOVERNOR

STATE OF MAINE  
WORKERS' COMPENSATION BOARD  
GENERAL COUNSEL'S OFFICE  
27 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0027

JOHN C. ROHDE, GENERAL COUNSEL  
JAN M. ADAMS, ASSISTANT GENERAL COUNSEL

PAUL H. SIGHINOLFI, ESQ.  
EXECUTIVE DIRECTOR / CHAIR

August 21, 2012

Maine State Legislature  
Office of Policy and Legal Analysis  
Right to Know Advisory Committee  
13 State House Station  
Augusta, Maine 04330

**RE: Draft Legislation for 39-A M.R.S.A. § 151(5)**

To the Members of the Right to Know Advisory Committee:

On behalf of the Workers' Compensation Board (the "Board"), I would like to thank the Committee for the opportunity to comment on the draft legislation regarding use of technology to conduct public proceedings. For the reasons stated in this letter, the Board respectfully suggests that its statutory authority to conduct meetings "by telephone or other remote-access technology" remain unchanged. 39-A M.R.S.A. § 151(5).

The Board consists of three management members, three labor members and a chair who is also the Board's executive director. The six management and labor members are chosen from lists provided by the Maine Chamber of Commerce and the Maine AFL-CIO respectively. They are not full-time Board employees. Each member serves on the Board while simultaneously working full-time in another occupation. It is sometimes difficult for these members to juggle the demands of their full-time occupations with the obligations that come with service on the Board. This is especially true given that Maine is a large state and members are sometimes required to travel long distances to attend meetings.

Because of these difficulties, the Legislature, in 2004, added a provision to the Workers' Compensation Act permitting Board members to participate in meetings "by telephone or other remote-access technology." 39-A M.R.S.A. § 151(5). This provision has worked well since its inception. Board members have been able to participate in meetings even when the demands of their full-time occupations make their physical presence impossible. It also is a means of assuring potential Board members who live far from the Board's central office in Augusta that, should they be appointed to the

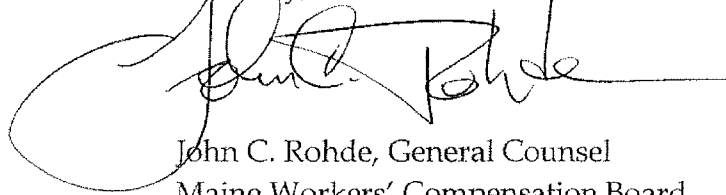
Board, they will be able to fulfill their duties as a member of the Board even if their physical presence is not always possible.

The draft legislation will make remote participation more difficult. Of particular concern is § 403-A (1)(D) which only permits participation by remote-access technology when physical attendance is "not reasonably practical." It is not clear what "not reasonably practical" means. It is clear, though, that this language would likely lead the Board back to where it was prior to 2004 when it was difficult to recruit and retain Board members.

For these reasons, the Board respectfully requests that the draft legislation, if it goes forward, leave 39-A M.R.S.A. § 151(5) unaltered.

Thank you again for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Rohde", with a large, sweeping loop on the left side.

John C. Rohde, General Counsel  
Maine Workers' Compensation Board

JCR/ldl



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

August 20, 2012

Judy Meyer, Chair  
Right to Know Advisory Committee  
13 State House Station  
Augusta, ME 04332

Dear Ms. Meyer,

Thank you for the opportunity to comment on behalf of the Ethics Commission staff concerning draft legislation governing the use of technology in meetings of public boards and commissions. It is an important topic, and we are grateful for your attention to it, as well as all of the other areas within your committee's jurisdiction that involve balancing efficient government operations and the public's interest in transparency.

The Commission staff recommends adopting the proposed legislation as drafted, which would make no changes to the Commission's meeting statute (21-A M.R.S.A. § 1002(2)).

**About the Commission**

The Commission receives financial reports from candidates, political parties, political action committees and other organizations raising and spending money to influence elections. We also administer the Maine Clean Election Act. We receive complaints from the public concerning acceptance of illegal contributions, inaccurate or late financial reporting, or misuse of public campaign funds.

The Commissioners are private citizens who are selected jointly by the legislative leaders and the Governor. Typically, the Commission has consisted of two Democratic members, two Republican members, and someone who is not enrolled in a political party. It is helpful if all five members can participate in every meeting, to promote the appearance of a politically balanced decision.

Generally, the Commission meets monthly. On meeting days, some of our members have regularly driven 7 or 8 hours round trip to Augusta, including Alan Harding (of Presque Isle) and Vinton Cassidy (of Calais).

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### **Special Requirement to Meet within Two Days of a Complaint**

The Legislature has decided that – during the last 28 days before an election – the Commission is required to meet within two business days of receiving a complaint or question. (21-A M.R.S.A. §§ 1002(1) & (2)) Thus, during this 28-day period, the Commission's meeting dates are largely outside of the control of the Commission. The Commissioners may need to set aside personal or professional plans on short notice to participate in a meeting. This meeting requirement may be unique within Maine Law, due to its unpredictability for board members.

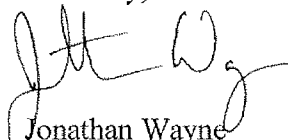
Accordingly, the Legislature authorized the Commission to meet by telephone during this 28-day period, provided that the Commission gives notice to all affected parties and the Commission's office remains open to the press and other members of the public to participate. (21-A M.R.S.A. § 1002(2))

### **Recommendation by Commission Staff**

The Commission staff therefore recommends making no changes to 21-A M.R.S.A. § 1002(2), including the notwithstanding phrase in the second sentence. This will provide the Commission the flexibility to set its own reasonable procedures for Commission meetings held during this limited time period. The Commission has a positive track record of adopting procedures in recent years that have promoted the transparency of our meeting process. In the last nine years, I cannot remember receiving any complaint or criticism that one of our meetings was closed to the public or did not comply with the open meetings law.

Thank you for your consideration of this letter.

Sincerely,



Jonathan Wayne  
Executive Director

## RTK AC General Agency Confidential Individual and Business Records Template

Sec. X. XX MRSA §XXX-X, as amended by PL XXXX, c. XXX, §XX and affected by §XX, is repealed.

Sec. X. XX MRSA §XXX-X is enacted to read:

### § XXX-X. Freedom of access; confidentiality of records

The records of the [board, agency, authority, etc.] are public records, except as specifically provided in this section.

#### 1. Confidential records. The following records are designated as confidential:

A. Records containing any information acquired by the [board, agency, authority, etc.] or a member, officer, employee or agent of the [board, agency, authority, etc.] from an applicant for or recipient of financial assistance provided pursuant to a program administered or established by the [board, agency, authority, etc.] is confidential for purposes of Title 1, section 402, subsection 3, paragraph A if the applicant or recipient is an individual.

B. A record obtained or developed by the [board, agency, authority, etc.] that:

(1) A person, including the [board, agency, authority, etc.], to whom the record belongs or pertains has requested be designated confidential; and

(2) The [board, agency, authority, etc.] has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the record, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment to any person to whom the record belongs or pertains.

C. A financial statement or tax return.

D. A record that contains an assessment by a person who is not employed by the [board, agency, authority, etc.] of the credit worthiness or financial condition of any person or project.

E. A record obtained or developed by the [board, agency, authority, etc.] prior to receipt of a written application or proposal if the application or proposal is for financial assistance to be provided by or with the assistance of the [board, agency, authority, etc.], or in connection with a transfer of property to or from the [board, agency, authority, etc.]. After receipt by the [board, agency, authority, etc.] of the application or proposal, a record pertaining to the application or proposal is

## RTK AC General Agency Confidential Individual and Business Records Template

not to be considered confidential unless it meets the requirements of the other paragraphs of the subsection.

The [board, agency, authority, etc.] shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or record, including information designated confidential under this subsection, specified in the written request. The information or record may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by the committee and may not be released for any other purpose.

**2. Exceptions.** Notwithstanding subsection 1, the following are public records and are not confidential:

A. Any otherwise confidential information the confidentiality of which the [board, agency, authority, etc.] determines to have been satisfactorily and effectively waived;

B. Any otherwise confidential information that has already lawfully been made available to the public; and

C. Impersonal, statistical or general information.

**3. Disclosure prohibited; further exceptions.** A person may not knowingly divulge or disclose records designated confidential by this section, **except that the [board, agency, authority, etc.], in its discretion and in conformity with legislative freedom of access criteria** in Title 1, chapter 13, subchapter 1A, may make or authorize any disclosure of information of the following types or under the following circumstances:

A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person;

B. Information requested by a financing institution or credit reporting service;

C. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance;

D. If necessary to ensure collection of any obligation in which the [board, agency, authority, etc.] has or may have an interest;

E. In any litigation or proceeding in which the [board, agency, authority, etc.] has appeared, introduction for the record of any information obtained from records designated confidential by this section;

## RTK AC General Agency Confidential Individual and Business Records Template

F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as the order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as the order appears on its face or otherwise to have been issued or made upon lawful authority; and

G. If necessary in connection with acquiring, maintaining, or disposing of property.

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